

education purposes. The defendant submitted a budget to the allocation board that required very nearly the whole three-fourths mill to satisfy. The allocation board, however, only allocated one-half mill—an amount insufficient to satisfy the budget and below the limitation. The plaintiff attempted to enjoin the intermediate district from certifying to it any amount in excess of one-half mill.

The court dismissed the complaint and allowed the certification and levy of the full three-quarters mill. It made the following observation which is pertinent here:

“It is the opinion of this Court that the only function of the allocation board with respect to voted millage increase over the fifteen mill limitation is to determine whether the millage required according to the proposed budget is within the limitation voted. If it is, that is the amount allocated; if it is not, the limitation voted shall be allocated.”

This authority compels me to answer your question in the negative. The allocation board may not allocate a millage less than that required by a district's special education budget if the budget is within the limitation approved by the voters of the intermediate district.

FRANK J. KELLEY,  
*Attorney General.*

650813.1

**ELECTIONS: Judges of recorder's and common pleas court of Detroit — canvass of votes.**

Votes cast for candidates for the office of judge of the recorder's court of the City of Detroit at both the primary and general election will be canvassed by the board of canvassers of the City of Detroit as specified by sections 426f and 426l of the Michigan election law as added by Act No. 85 of the P.A. of 1965.

Judges of the common pleas court of Detroit will be elected at the city election and votes cast for candidates for that office will be canvassed by the board of canvassers of the City of Detroit.

Candidates for election as judges of the recorder's and common pleas court of Detroit will file nominating petitions in the office of the city clerk.

No. 4448

August 13, 1965.

Honorable J. Bob Traxler  
Chairman, House Elections Committee  
House of Representatives  
Lansing, Michigan

You have presented for my opinion questions relating to the election of judges of certain courts in the City of Detroit. These will be answered seriatim:

1. “Should the canvass of the vote for judge of Recorder's Court

in Detroit be performed by the Detroit Board of Canvassers or by the Wayne County Board of Canvassers?"

As noted by you, it was recently held, quoting the syllabus in an opinion of this office:<sup>1</sup>

"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."

Accordingly, judges of the recorder's court will hereafter be elected at the general November election in the even numbered years rather than at the city election.<sup>2</sup>

Act No. 85 of the P.A. of 1965<sup>3</sup> added several sections to the Michigan election law specifically providing for the nomination and election of judges of municipal courts of record with state criminal jurisdiction above that cognizable by justices of the peace in a city having a population of 1,000,000 or more. This act would, therefore, be applicable to the nomination and election of judges of the recorder's court of Detroit.<sup>4</sup> Sections 426f and 426i as added by Act No. 85 specify that the votes cast for candidates for the office of judge of that court at both the primary and general election shall be canvassed by the city board of canvassers. Such provisions are controlling. Therefore, votes cast for candidates for that office will be canvassed by the board of canvassers of the City of Detroit as specified.

2. "Should the canvass of the vote for judge of the Common Pleas Court of Detroit be performed by the Detroit Board of Canvassers or the Wayne County Board of Canvassers?"

By another opinion it was held, quoting the syllabus, that:<sup>5</sup>

"A Common Pleas Court established pursuant to Act 260 P.A. 1929, as amended, is a city court and the judges of that court do not occupy either a state, county, or township office requiring their election at a general November election pursuant to the provisions of Sec. 5, Art. II, Constitution of 1963 . . ."

Accordingly, judges of the common pleas court of the City of Detroit will be elected at a city election. Act No. 100 of the P.A. of 1965 (Enrolled

<sup>1</sup> O.A.G. 1963-64 No. 4225, p. 295.

<sup>2</sup> A general city election will be held in Detroit on the first Tuesday following the first Monday in November 1965 and every fourth year thereafter. Title II, Chapter II, Sec. 1, of the Detroit City Charter.

<sup>3</sup> Enrolled House Bill No. 2291, which was given immediate effect and approved on June 24, 1965.

<sup>4</sup> Act No. 326 of the L.A. of 1883 being C.L. 1948 and C.L.S. 1961 § 726.1, et seq.; M.S.A. 1962 Rev. Vol. § 27.3551, et seq. Section 24 was since amended by the L.A. 1 of the 2d Ex. Sess. of 1963. See also Act No. 369 of the P.A. of 1919 as amended being C.L. 1948 and C.L.S. 1961 § 725.1, et seq.; M.S.A. 1962 Rev. Vol. § 27.3941, et seq. and *Attorney General, ex rel., Coitter v. Lindsay*, 221 Mich. 533.

<sup>5</sup> O.A.G. 1963-64 No. 4349, p. 424.

House Bill 2290) extended the present term of office of common pleas court judges serving on December 31, 1965, for an additional year and provides for the election of their successors at the general November election held in 1966 and in the even numbered years thereafter. Therefore, judges of the common pleas court will be elected at a special city election held contemporaneously with the general November election in said even numbered years. It follows that votes cast for those offices will be canvassed by the board of canvassers of the City of Detroit.<sup>6</sup>

3. "Can the candidates for Recorder's Judges and Common Pleas Judges continue to file with the clerk of the City of Detroit as provided in House Bills 2290 (P.A. No. 100) and 2291 (P.A. No. 85) as amended?"<sup>7</sup>

Section 426d of Act No. 116 of the P.A. of 1954 as added by Act No. 85 of the P.A. of 1965, provides for the filing of nominating petitions or the depositing of a filing fee by the candidates for the office of judge of the recorder's court with the city clerk. Section 646c of Act No. 116 of the P.A. of 1954 as added by Act No. 100 of the P.A. of 1965, provides for the filing of nominating petitions by candidates for judge of the common pleas court with the city clerk. Such provisions violate no constitutional limitation or requirement. Therefore, candidates for election as judges for the recorder's court or the common pleas court of the City of Detroit will file nominating petitions in the office of the city clerk as specified by said acts.

FRANK J. KELLEY,  
*Attorney General.*

650910.1

**CONSTITUTIONAL LAW:**  
**SCHOOLS: Religious practices in the schools.**

The Supreme Court of the United States has ruled that the State may not prescribe any particular form of prayer for use in the public schools even though the prayer is denominationally neutral and observance on the part of the students is purely voluntary.

The Supreme Court of the United States has ruled that the State may not require as a religious exercise either the reading of the Bible or the recitation of prayers in the public schools even if individual students may absent themselves upon parental request.

Neither a school board nor a teacher has the discretion to conduct or sanction a voluntary program of prayers, Bible reading, or other devotional exercises in the public schools.

A strictly voluntary program of student prayer or other religious exercise is permissible if it does not take place during regular school hours, and if

<sup>6</sup> See C.L.S. 1961 § 168.323; M.S.A. 1956 Rev. Vol. § 6.1323.

<sup>7</sup> Since the submitting of the request for this opinion, House Bills 2290 and 2291 have been passed, given immediate effect, signed by the Governor, and assigned the Public Act numbers designated.