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CITIES: Home Rule Charters.

COUNTIES: Home Rule Charters.

CONSTITUTION OF 1963: Tax Limitation.

LEGISLATION: Establishment of Charter County.

Under proposed legislation a charter county may not be authorized to exercise one or more of the charter-conferred powers within the boundaries of a non-consenting home rule city exercising a like power upon authorization of a majority vote of the local legislative bodies of the county.

The constitutional limitations upon the total amount of ad valorem taxes which may be levied does not apply to a home rule city, inasmuch as the city is subject to tax limitations prescribed by either its charter or the home rule cities act. Both Senate Bill 112 and the House substitute therefor prescribe tax limitations which if enacted would be applicable to a charter county and which would exempt the county from such constitutional tax limitations.

The aggregate maximum debt limitations to which the several overlapping units, including a charter county and home rule city, are subject are listed.

Whether a vote of the electors is required as a condition precedent to the levy of a specific tax or excise depends upon the requirements of either a general legislative act or the charter of the county.

No. 4523

April 29, 1966.

Honorable Francis W. Beedon
Chairman, Committee on Towns
and Counties
House of Representatives
The Capitol
Lansing, Michigan

Your recent request for opinion upon behalf of the Towns and Counties Committee relates to Senate Bill 112, the so-called county home rule bill. During its consideration of that bill, the Senate adopted a substitute and passed the same. That bill which is hereinafter referred to as the "Senate bill" was referred to the Towns and Counties Committee of the House of Representatives, which has since reported the same to the floor of the House with the recommendation that a substitute therefor, hereinafter referred to as the "House substitute," be adopted and passed. The bill is presently on the House calendar awaiting consideration thereof by that body. Your questions have been rephrased and will be answered seriatim.

1. Does the county home rule program as proposed in Senate Bill 112, or in the present substitute bill conflict with the home rule cities act of 1909, as amended? Specifically, do the provisions of Section 15c of either proposal conflict with the authority granted to home rule cities under the home rule cities act?

The 1963 Michigan Constitution in Article VII provides with respect to home rule cities and villages:

"Sec. 21. The legislature shall provide by general laws for the incorporation of cities and villages. Such laws shall limit their rate of ad valorem property taxation for municipal purposes, and restrict the powers of cities and villages to borrow money and contract debts. Each city and village is granted power to levy other taxes for public purposes, subject to limitations and prohibitions provided by this constitution or by law.

"Sec. 22. Under general laws the electors of each city and village shall have the power and authority to frame, adopt and amend its charter, and to amend the existing charter of the city or village heretofore granted or enacted by the legislature for the government of the city or village. Each such city and village shall have power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law. No enumeration of powers granted to cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section.

"Sec. 23. Any city or village may acquire, own, establish and maintain, within or without its corporate limits, parks, boulevards, cemeteries, hospitals and all works which involve the public health or safety.

"Sec. 24. Subject to this constitution, any city or village may acquire, own or operate, within or without its corporate limits, public service facilities for supplying water, light, heat, power, sewage disposal and transportation to the municipality and the inhabitants thereof.

"Any city or village may sell and deliver heat, power or light without its corporate limits in an amount not exceeding 25 percent of that furnished by it within the corporate limits, except as greater amounts may be permitted by law; may well and deliver water and provide sewage disposal services outside of its corporate limits in such amount as may be determined by the legislative body of the city or village; and may operate transportation lines outside the municipality within such limits as may be prescribed by law.

"Sec. 25. No city or village shall acquire any public utility furnishing light, heat or power, or grant any public utility franchise which is not subject to revocation at the will of the city or village, unless the proposition shall first have been approved by three-fifths of the electors voting thereon. No city or village may sell any public utility unless the proposition shall first have been approved by a majority of the electors voting thereon, or a greater number if the charter shall so provide."

As to cities, the predecessors of such constitutional provisions in the 1908

Constitution were implemented by Act 279, P.A. 1909,¹ the home rule cities act.

Section 2 of Article VII of the 1963 Constitution provides:

"Any county may frame, adopt, amend or repeal a county charter in a manner and with powers and limitations to be provided by general law, which shall among other things provide for the election of a charter commission. The law may permit the organization of county government in form different from that set forth in this constitution and shall limit the rate of ad valorem property taxation for county purposes, and restrict the powers of charter counties to borrow money and contract debts. Each charter county is hereby granted power to levy other taxes for county purposes subject to limitations and prohibitions set forth in this constitution or law. Subject to law, a county charter may authorize the county through its regularly constituted authority to adopt resolutions and ordinances relating to its concerns.

"The board of supervisors by a majority vote of its members may, and upon petition of five percent of the electors shall, place upon the ballot the question of electing a commission to frame a charter.

"No county charter shall be adopted, amended or repealed until approved by a majority of electors voting on the question."

Senate Bill 112 is designed to implement such constitutional provisions. Section 15 of the Senate bill provides:

"A county charter adopted under the provisions of this act may provide:

"* * *

"(c) For the authority to perform at the county level any function or service not prohibited by law, which shall include, by way of enumeration and not limitation: police protection, fire protection, planning, zoning, education, health, welfare, recreation, water, sewer, waste disposal, transportation, abatement of air and water pollution, civil defense, and any other function or service necessary or beneficial to the public health, safety and general welfare of the county. *Powers granted solely by charter may not be exercised in a local unit of government which is exercising a like power without either the consent of the local legislative body, or by the authorization of majority of the city, village and township legislative bodies of the county approving the same.* The cost of any service authorized to be performed by charter, which costs may be determined on a cost accounting basis, must be charged on a cost basis to the unit of government or area benefited by such service unless and until it is rendered on a substantially county-wide basis in which event such cost may be paid from the general fund.

"* * *." (Emphasis supplied)

¹ C.L. 1948 and C.L.S. 1961 § 117.1, et seq., as amended; M.S.A. 1949 Rev. Vol. and M.S.A. 1965 Cum. Supp. § 5.2071, et seq.

Said section of the House substitute reads:

"A county charter adopted under the provisions of this act may provide:

"* * *

"(c) For the authority to perform at the county level any function or service not prohibited by law, which shall include, by way of enumeration and not limitation: police protection, fire protection, planning, zoning, education, health, welfare, recreation, water, sewer, waste disposal, transportation, abatement of air and water pollution, civil defense, and any other function or service necessary or beneficial to the public health, safety and general welfare of the county. Powers granted solely by charter may not be exercised in a local unit of government which is exercising a like power without the consent of the local legislative body. The cost of any service authorized to be performed by charter, which costs may be determined on a cost accounting basis, must be charged on a cost basis to the unit of government or area benefited by such service.

"* * *." (Emphasis supplied)

The distinction between the two bills lies in the fact that under the Senate bill the county could exercise a power conferred upon it solely by its charter within the boundaries of a home rule city which is exercising a like power without the consent of the legislative body of the particular city if approved by the legislative body of a majority of the cities, villages, and townships of the county. Under the House substitute, such power could not be exercised within the boundaries of a home rule city without the consent of the legislative body of that city.

Inasmuch as the above-quoted provision of the Senate bill purports to authorize a charter county to exercise one or more of the charter-conferred powers within the boundaries of a non-consenting home rule city exercising a like power, upon authorization of a majority vote of local legislative bodies, there exists a conflict within the area of permissive self-government granted to the home rule city under Act 279, which would be invalid. Exercise of such power in such area by the charter county is made dependent upon the authorizing vote but without the consent of the home rule city and no claim can be made that the bill, if enacted, would have the force of a general law thereby superseding conflicting provisions of the home rule city charter so that such provisions of the Senate bill would become a part of the charter of the instant home rule city. Under the Senate bill the legislature would authorize a charter county to provide certain services within the territory of a non-consenting home rule city upon approval of a majority of the legislative bodies of the county. The bill has the same frailty that the Michigan Supreme Court condemned in *Arlan's Department Stores, Inc., v. Attorney General*, 374 Mich. 70 (1964) where the Court struck down a statute that empowered board of supervisors to permit the sale within the county of any or all of the prohibited commodities under an act aimed at barring sales on any successive Saturday and Sunday, the Court holding such a provision to be an improper delegation of legislative power. Unlike the provision in the Senate bill, the House

substitute would authorize a charter county to exercise one or more of the charter-conferred powers within the boundaries of a home rule city subject to consent of the legislative body of the home rule city so there is no conflict within the area of permissive self-government under Act 279. No opinion is rendered as to whether the legislative body of a home rule city could lawfully give consent to the charter county to furnish such services within the home rule city where the city charter mandates that the city government establish, maintain and operate facilities for the furnishing of the service in question.

2. The 1963 Constitution limits the total amount of general ad valorem taxes which may be levied by the different units to 15 or 18 mills. Does this limit apply to home rule cities and would it apply to a charter county under either the Senate bill or the House substitute?

Section 6 of Article IX provides as follows:

"Except as otherwise provided in this constitution, the total amount of general ad valorem taxes imposed upon real and tangible personal property for all purposes in any one year shall not exceed 15 mills on each dollar of the assessed valuation of property as finally equalized. Under procedures provided by law, which shall guarantee the right of initiative, separate tax limitations for any county and for the townships and for school districts therein, the aggregate of which shall not exceed 18 mills on each dollar of such valuation, may be adopted and thereafter altered by the vote of a majority of the qualified electors of such county voting thereon, in lieu of the limitation hereinbefore established. These limitations may be increased to an aggregate of not to exceed 50 mills on each dollar of valuation, for a period of not to exceed 20 years at any one time, if approved by a majority of the electors, qualified under Section 6 of Article II of this constitution, voting on the question.

"The foregoing limitations shall not apply to taxes imposed for the payment of principal and interest on bonds or other evidences of indebtedness or for the payment of assessments or contract obligations in anticipation of which bonds are issued, which taxes may be imposed without limitation as to rate or amount; or to taxes imposed for any other purpose by any city, village, charter county, charter township, charter authority or other authority, the tax limitations of which are provided by charter or by general law.

"In any school district which extends into two or more counties, property taxes at the highest rate available in the county which contains the greatest part of the area of the district may be imposed and collected for school purposes throughout the district."

As stated in the second paragraph of the above-quoted section, neither the 15 nor 18 mill limitation applies to the general ad valorem taxes imposed by a city "the tax limitations of which are provided by charter or by gen-

eral law." Among the mandatory charter provisions of the home rule cities act² is:

"Each city charter shall provide:

"* * *"

"(g) For annually laying and collecting taxes in a sum not to exceed 2 per centum of the assessed value of all real and personal property in the city: Provided, That unless and until such charter shall provide for a different tax rate limitation, the governing body of every city is hereby authorized to levy and collect taxes for municipal purposes in a sum up to and including 1 per centum of the assessed value of all real and personal property in the city, subject to the provisions of section 1a of chapter 7 of Act No. 202 of the Public Acts of 1943, as amended.

"* * *"

It follows that such constitutional limitation is not applicable to a home rule city.

Reference to Section 6 of Article IX of the Constitution evidences that the provision exempting home rule cities from the constitutional tax limitation is likewise applicable to a charter county. Section 14 of the Senate bill provides:

"A county charter adopted under the provisions of this act shall provide:

"* * *"

"(m) For the levy and collection of taxes and the fixing of an ad valorem property tax limitation of not to exceed 1% of the state equalized value of the taxable property within the county.

"* * *"

Section 14 of the House substitute reads:

"A county charter adopted under the provisions of this act shall provide:

"* * *"

"(m) For the levy and collection of taxes and the fixing of an ad valorem property tax limitation of not to exceed 1% of the state equalized value of the taxable property within the county. Not less than 1/2 of such levy shall come from within the constitutional 15 to 18 mill tax limitation.

"* * *"

The fact that the limitations in the two bills vary is of no legal significance. Each bill prescribes tax limitations upon the levy by the county of ad valorem taxes. Hence, a charter county would likewise be exempt from the constitutional tax limitation.

3. What is the aggregate debt limit that might be possible under Section 14(1) of the Senate bill and the House substitute?

² C.L.S. 1961 § 117.3(g); M.S.A. 1965 Cum. Supp. § 5.2073(g).

It is my understanding that you are asking for the maximum debt limitations to which the major overlapping units, including a home rule city, are subject. These are:

County—10 percent of the state equalized assessed valuation of the taxable property within the county. Section 11, Article VII of the Constitution and Section 14(1) of the respective bills.

Home Rule City—10 percent of assessed value of the real and personal property in the city. C.L. 1948 § 117.4a; M.S.A. 1949 Rev. Vol. § 5.2074.

Local School District—15 percent of the total assessed valuation of the district. M.S.A. 1965 Cum. Supp. § 15.3681.

Community College District—1½ percent of the first \$250,000,000 plus 1 percent of the excess over \$250,000,000 of the last confirmed state equalized valuation of all taxable property in the district, except that upon approval of a majority of the electors of the district, this may be increased to 15 percent of the total state equalized valuation of the district. M.S.A. 1965 Cum. Supp. § 15.615(14)(5).

Intermediate School District:

"No loan shall be made and no bonds shall be issued for a longer term than 30 years nor for any sum which, together with the total outstanding indebtedness of the district, exceeds 1/10 of 1% on the state equalized valuation of the taxable property within the district, unless the proposition of making such loans or of issuing bonds is submitted first to a vote of the school tax electors of the district at a general or special school election and approved by the majority of the electors voting thereon, in which event loans may be made or bonds may be issued for the purposes hereinbefore set forth in an equal amount to that provided by chapter 12 of part 2 of this act." Sec. 298b of Act 269, P.A. 1955, the school code of 1955, as added by Act 21, P.A. 1966, effective April 13, 1966.

4. Regarding Section 15(e) in both the Senate bill and the House substitute, do these sections permit the county to impose specific taxes without a vote of the people of the county?

Senate Bill 112 lists among the permissive charter provisions in Section 15:

"(e) For the power and authority to levy and collect any taxes, fees, rents, tolls or excises, the levy and collection of which is neither pre-empted by the state nor prohibited by law."

The comparable provision of the House substitute bill provides:

"(e) For the power and authority to levy and collect any taxes, fees, rents, tolls or excises, the levy and collection of which is authorized by law."

Neither version of subsection (e) by itself requires a vote of the electors as a condition precedent to the levy of an authorized specific tax or excise. Whether such a vote would in fact be required depends upon either of the following:

(a) Whether such a requirement is imposed by a general state act. By way of example, such a state statute might provide that a county could levy an income tax, but only when approved by a majority of the electors

of the county voting upon such a proposal. In that event, the affirmative vote of the electors would be a necessary condition precedent to the levy of an income tax by the county, irrespective of whether the charter contained such a requirement.

(b) Even in the absence of such a statutory requirement, the charter adopted by a given county might require approval of the electors to the levy of an income tax, in which case the affirmative vote of the electors would likewise be a necessary condition precedent to the levy by the county of such a tax.

In the absence of such a statutory or charter requirement for a vote of the people, the Senate bill would permit the county to impose specific taxes to the extent that the levy and collection of such taxes has been neither pre-empted by the state nor prohibited by law; but the House substitute bill does not in itself empower the county to levy and collect specific taxes with or without a vote of the people unless and until such levy and collection has theretofore been authorized by law.

FRANK J. KELLEY,
Attorney General.

660502.2

COMMUNITY COLLEGES: Authority of board of trustees to move the site of a community college facility.

Under Act 188, P.A. 1955, as amended, the board of trustees of a community college is the sole authority within the district empowered to move the site of a community college facility from an established site to a different one, to the exclusion of the qualified district electors.

The question of moving the site of a community college facility may not be submitted to the voters of the district, nor may a special election under Section 4b of Act 82, P.A. 1957, as amended, be called to vote on moving the site.

No. 4434

May 2, 1966.

Mr. Alexander J. Kloster
Acting Superintendent of Public Instruction
Prudden Building
Lansing, Michigan

You have requested my opinion on the following questions:

"1. Is the Board of Trustees of a community college the sole authority to move the site of a community college facility from an established site to a different site;

"2. May the Board of Trustees by a majority vote submit to the voters of the district the matter of transferring the community college facility to a new and different site under the following wording of the referendum section (being Section 15.615(14a) M.S.A. . .)? Does the matter of designating a site come within the scope of the powers of the electors?