

The answer to your question is therefore 'No.' It is my opinion that the Reeths-Puffer School District is not removed from the proposed plan and the residents of that district will not be denied the privilege of voting on the question of reorganization.

FRANK J. KELLEY,
Attorney General.

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COUNTY: Board of supervisors – maximum compensation for committee meetings.

Members other than the chairman of the board of supervisors of a county having a population of 390,000 or less are limited to a total of 60 compensable days of authorized committee work on days upon which the board of supervisors is not in session during a calendar year.

No. 4541

July 25, 1966.

Mr. John T. Hammond
Prosecuting Attorney
Berrien County
816 Ship Street
St. Joseph, Michigan 49085

You have requested upon behalf of the chairman of the board of supervisors of Berrien County my opinion as to the limitations upon the number of days for which members of the board may be paid per diem compensation for attending committee meetings on days upon which the board is not in session.

Provision for payment of per diem compensation to members of the board of supervisors is made by Section 30 of Act 156, P.A. 1851, as last amended by Act 366, P.A. 1965; M.S.A. 1965 Cum. Supp. § 5.353:

“Sec. 30. (1) Every member of such board of supervisors shall be allowed compensation and mileage as follows:

“(a) The existing rate of compensation per day when this section, as amended, becomes effective shall remain as the rate of compensation until a new rate of compensation shall be established by resolution adopted by the affirmative vote of 2/3 of the members of the board. In counties now or hereafter having a population of not more than 40,000, members of the board shall not receive compensation for attending meetings of the board, either regular or special, for more than 31 days in any calendar year; in counties now or hereafter having more than 40,000 population and not more than 240,000 population, members of the board shall not receive compensation for attending meetings of the board, either regular or special, for more than 51 days in any calendar year; and in counties now or hereafter having a population of more than 240,000, members of the board shall not receive compensation for attending meetings of the board, either regular or special, for more than 61 days in any calendar year.

"(b) Each member of the board shall receive 10 cents per mile for each mile necessarily traveled in going to and returning from the place of meeting each day such board is in session, but not to exceed the number of days in any calendar year specified in subdivision (a) of this section.

"(c) Each member of the board shall receive compensation as established for attendance at board meetings when he is serving as a member of any committee of the board when the board is not in session or when he is acting in an individual capacity as a supervisor or as a chairman of a committee in carrying out the business of the board when authorized by the board. No member of any committee shall be entitled to payment under the provisions of this subdivision where the services performed were not ordered by said board or the chairman of said board or for more than 60 days in any one year as a member of such committee, except that in counties now or hereafter having a population of more than 350,000 and not more than 1,500,000, members serving on each committee shall be entitled to payment of not exceeding a total of 120 days for each committee, but not to exceed a total of 200 days for all committee work in any calendar year, as provided under the provisions of this subdivision, when ordered to serve by the board or chairman of the board. Nothing herein contained shall be construed so as to in any way repeal other acts providing for compensation to members of boards engaged in committee work or change in number of days allowed therein for regular or special sessions in any one year, and said act shall stand the same as if this act had not been passed. The chairman of said board as an ex officio member of the several committees of the board and for the performance of any extra duties assigned to him by the board in connection with attendance at meetings of the several committees of the board, or other assignments, the limitation of number of days for which he may receive compensation shall not apply.

"* * *"

Pertinent to your inquiry are the amendments to subsection (c) of Section 30 enacted since 1952. As last amended by Act 158, P.A. 1952, subsection (c) read:

"(c) Each member of the board shall receive compensation of \$8.00 per day actually served as a member of a committee of the board when the board is not in session: Provided, That the board of supervisors of any county, by resolution adopted by a majority vote of the members, may increase such compensation up to and not to exceed \$10.00 per day: Provided further, That no member of any committee shall be entitled to payment under the provisions of this subdivision where the services performed were not ordered by said board or the chairman of said board or for more than 40 days in any 1 year a member of such committee: Provided, That nothing herein contained shall be construed so as to in any way repeal other acts providing for compensation to members of boards engaged in committee work or change in number of days allowed therein for regular or special sessions in any 1 year, and said act shall stand

the same as if this act had not been passed: Provided further, That the chairman of said board as an ex officio member of the several committees of the board and for the performance of any extra duties assigned to him by the board in connection with attendance at meetings of the several committees of the board, or other assignments, the limitation of number of days for which he may receive compensation shall not apply."

As next amended by Act 270, P.A. 1957, said subsection read:

"(c) Each member of the board shall receive compensation as established for attendance at board meetings when he is serving as a member of a committee of the board when the board is not in session: Provided, That no member of any committee shall be entitled to payment under the provisions of this subdivision where the services performed were not ordered by said board or the chairman of said board or for more than 60 days in any one year as a member of such committee: Provided, That nothing herein contained shall be construed so as to in any way repeal other acts providing for compensation to members of boards engaged in committee work or change in number of days allowed therein for regular or special sessions in any one year, and said act shall stand the same as if this act had not been passed: Provided further, That the chairman of said board as an ex officio member of the several committees of the board and for the performance of any extra duties assigned to him by the board in connection with attendance at meetings of the several committees of the board, or other assignments, the limitation of number of days for which he may receive compensation shall not apply."

Section 30 was later amended by Act 89, P.A. 1960, by which amendment certain language was deleted and the italicized language inserted in said subsection which then read:

"(c) Each member of the board shall receive compensation as established for attendance at board meetings when he is serving as a member of any committee of the board when the board is not in session. No member of any committee shall be entitled to payment under the provisions of this subdivision where the services performed were not ordered by said board or the chairman of said board or for more than 60 days in any one year as a member of such committee, *except that in counties now or hereafter having a population of more than 390,000 and not more than 1,500,000 members serving on each committee shall be entitled to payment of not exceeding a total of 120 days for each committee, but not to exceed a total of 150 days for all committee work in any calendar year, as provided under the provisions of this subdivision, when ordered to serve by the board or chairman of the board.* Nothing herein contained shall be construed so as to in any way repeal other acts providing for compensation to members of boards engaged in committee work or change in number of days allowed therein for regular or special sessions in any one year, and said act shall stand the same as if this act had not been passed. The chairman of said board as an ex officio member of the several committees

of the board and for the performance of any extra duties assigned to him by the board in connection with attendance at meetings of the the several committees of the board, or other assignments, the limitation of number of days for which he may receive compensation shall not apply.”

Section 30 was also amended by Act 136, P.A. 1962 and Act 79, P.A. 1964, without significant change in subsection (c). As last amended by Act 366, P.A. 1965, subsection (c) is quoted at the outset of this opinion.

You advise that the population of Berrien County is approximately 150,000 according to the 1960 federal decennial census.¹ Following enactment of the amendment to Section 30 by Act 270, P.A. 1957, the then attorney general issued O.A.G. 1957-58, Vol. 1, No. 3106, p. 421, in response to request from a prosecuting attorney who had construed the 60-day limitation as being applicable to compensable days of service upon each committee of the board of which the individual supervisor was a member, as distinguished from a limitation upon the total number of days for which the individual supervisor could be compensated during the year. The attorney general quoted from the prosecutor's letter and stated:

“You state in your communication that —

“ ‘Our local situation is such that supervisors are serving on several committees [far] in excess of 60 days of service for all the committees, while, in no case, are the days of service in excess of 60 days for any individual committee. The representative of the Auditor General's office has advised that no payment could be made for days of service in excess of 60 regardless of the fact that the days in excess of that total have been served on different committees.’

“You set forth in your inquiry a portion of the applicable statute as follows:

“ ‘Each member of the board shall receive compensation as established for attendance at board meetings when he is serving as a member of a committee of the board when the board is not in session: Provided, That no member of any committee shall be entitled to payment under the provisions of this subdivision where the services performed were not ordered by said board or the chairman of said board or for more than 60 days in any one year as a member of such committee.’

“You state that —

“ ‘A strict reading of the above statutory language reveals a prohibition against payment for more than 60 days on a committee. The language employed is ‘such committee’ rather than ‘such committees.’ It is submitted that there is no prohibition, express or implied, in the statute which would forbid payment for all days served on different committees, provided that payment does not exceed 60 days as to any one committee.’

“You then advanced as your opinion ‘that it was the intention of

¹ C.L.S. 1961 § 8.3v; M.S.A. 1961 Rev. Vol. § 2.212(22).

the act that supervisors be paid for their days of service on all committees and that the language does not support an extension of the 60 day restriction beyond the limitation expressed.'

"The Attorney General cannot agree with your interpretation of the legislative intent when the statute is read in its entirety. Subsection (1) (c) of Section 30 of the statute in question as last amended by Act 270, P.A. 1957 reads as follows:

"'Each member of the board shall receive compensation as established for attendance at board meetings when he is serving as a member of a committee of the board when the board is not in session: Provided, That no member of any committee shall be entitled to payment under the provisions of this subdivision where the services performed were not ordered by said board or the chairman of said board or for more than 60 days in any one year as a member of such committee: Provided, That nothing herein contained shall be construed so as to in any way repeal other acts providing for compensation to members of boards engaged in committee work or change in number of days allowed therein for regular or special sessions in any one year, and said act shall stand the same as if this act had not been passed: Provided further, That the chairman of said board as an ex officio member of the several committees of the board and for the performance of any extra duties assigned to him by the board in connection with attendance at meetings of the several committees of the board, or other assignments, the limitation of number of days for which he may receive compensation shall not apply.'

"The last proviso of this section allows the chairman of the board of supervisors to be compensated for his services on several committees of the board without limitation as to the number of days he served, and evidences a determination of legislative intent that the number of days of committee service by all other members of the board of supervisors for which they may be compensated is limited to a maximum of 60 days in any one year. However, the 60 day limitation does not apply to those members of the board of supervisors who serve as members of the county fair board, as provided in Sec. 30 (5) of Act No. 270, P.A. 1957:

"'Each member of the board shall receive compensation as established for attendance at board meetings for serving as a member of the county fair board pursuant to the provisions of Act No. 11 of the Public Acts of 1929, as amended, being sections 46.151 to 46.153 of the Compiled Laws of 1948, without regard to the limitations in this section as to the number of days for which the member may be compensated.'

"Inasmuch as the matter of compensation of the members of the board of supervisors for service on committees thereof is now established by Act No. 270, P.A. 1957, effective September 27, 1957, it is the opinion of the Attorney General that no member of the board of supervisors save its chairman and those serving on the county

fair board for attendance at county fair board meetings.² may be compensated for days of attendance at meetings of all committees thereof of which he is a member, in excess of 60 days in any one year."

That opinion expresses the administrative construction placed upon the 60-day limitation of subsection c, which construction was followed at least from the time of that opinion. That such construction was followed by the auditor general is further evidenced by his report of the 1958 Oakland County audit, page 12, issued March 14, 1960, in which reference is made to an overpayment of certain compensation in excess of a total of 60 days for the year, which overpayment was refunded at that time.³

During the 1960 session of the legislature, Representative Lloyd L. Anderson of Oakland County introduced House Bill 103 which became Act 89, P.A. 1960. As introduced, the bill proposed to amend subsection c to read, quoting from page 3 of the printed bill:

" 3 (c) Each member of the board shall receive compensation
 as estab-
 " 4 lished for attendance at board meetings when he is serving
 as a member
 " 5 of a ANY committee of the board when the board is not in
 session. + ~~Pro-~~
 " 6 vided, That no member of any committee shall be entitled
 to payment
 " 7 under the provisions of this subdivision where the services
 performed were
 " 8 not ordered by said board or the chairman of said board or
 for more than
 " 9 60 days in any one year as a member of such committee + ~~Pro-~~
 vided, That
 "10 MEMBERS SERVING ON EACH COMMITTEE SHALL
 BE EN-
 "11 TITLED TO PAYMENT OF NOT EXCEEDING A TO-
 TAL OF 120
 "12 DAYS FOR EACH COMMITTEE, AS PROVIDED
 UNDER THE
 "13 PROVISIONS OF THIS SUBDIVISION, WHEN OR-
 DERED TO
 "14 SERVE BY THE BOARD OR CHAIRMAN OF THE
 BOARD.

During the consideration of the bill by the House of Representatives in the committee of the whole on general orders, the following amendment⁴ was adopted:

² See subsection 4 of Section 30 as presently in effect.

³ See also 1960 Oakland County audit report, pp. 19-20, dated October 12, 1962.

⁴ House Journal 1960, pp. 315-16.

"1. Amend page 3, line 12, after 'COMMITTEE,' BY INSERTING 'BUT NOT TO EXCEED A TOTAL OF 150 DAYS FOR ALL COMMITTEE WORK IN ANY CALENDAR YEAR,'."

The bill was then passed without further amendment⁵ As thus amended such provision would be applicable to the board of supervisors of each county of the state and would have limited the number of days for which a supervisor could have been paid certain compensation to 120 for attendance at meetings of each committee and a total of 150 days for all committee work in any calendar year.

However, the Senate during its consideration of the bill in the committee of the whole on general orders⁶ also amended the bill to reinstate practically all of the stricken language in lines 6 to 9 of page 3 of the bill as introduced and to insert the additional language in upper case:

"1. Amend page 3, line 5, after 'session.', by inserting 'No member of any committee shall be entitled to payment under the provisions of this subdivision where the services performed were not ordered by said board or the chairman of said board or for more than 60 days in any one year as a member of such committee, EXCEPT THAT IN COUNTIES NOW OR HEREAFTER HAVING A POPULATION OF MORE THAN 390,000 AND NOT MORE THAN 1,500,000.'"

The bill was then passed⁷ without further amendment. Upon return of the bill to the House of Representatives,⁸ that body concurred in the Senate amendment.⁹ The bill as thus amended became Act 89, P.A. 1960 with subsection c reading as above quoted.

The effect of the adoption of the Senate amendment was to reinsert the former 60-day limitation and make the same applicable to the board of supervisors of all counties, except Oakland and Macomb. According to the 1960 federal decennial census, those two counties had the required population to come within the exception providing for the payment of the maximum of 120 days for attendance at meetings of each committee and a total of 150 days during the calendar year. By virtue of the amendment to Section 30 by Act 366, P.A. 1965, the total limitation for committee work during the calendar year was increased to 200 and the minimum population requirement reduced so as to make such exception also applicable to the board of supervisors of Kent and Genesee counties.

With respect to the 60-day limitation applicable to the remaining counties of the state, the administrative construction placed upon that provision has been followed at least since 1957. Such construction limits the total number of days for which a member of the board of supervisors may be paid per diem compensation for committee work during a given year. That construction by the auditor general was corroborated by the 1957

⁵ House Journal 1960, p. 339.

⁶ Senate Journal 1960, p. 565.

⁷ Senate Journal 1960, p. 586.

⁸ House Journal 1960, p. 920.

⁹ House Journal 1960, pp. 960-61.

Attorney General opinion above quoted. Presumably the members of the legislature during the 1960 and subsequent sessions, at which the several amendments to Section 30 were enacted, were familiar with such administrative construction. The re-enactment without change of the language so construed carries with it the sanction of legislative approval of that construction. *Brewster v. Gage, Collector of Internal Revenue*, (1930) 280 U.S. 327, 337, 74 L. ed. 457, 463. A different construction should not now be placed upon it unless the language admits of no other construction. *Commerce-Guardian Trust and Savings Bank v. State of Michigan*, (1924) 228 Mich. 316, 330. It follows that in counties to which the above noted exception is not applicable, a member of the board of supervisors may not be compensated for more than 60 days' committee work during a given year.

You also inquire as to whether the term "year" as used in the 60-day provision refers to the calendar year or the year immediately following the organization of the board of supervisors at its April session. That issue was the subject of another attorney general opinion¹⁰ issued while Section 30, as amended by Act 158, P.A. 1952, was in effect. The opinion noted that both subsection a in prescribing the limitation upon the number of compensable days for attendance at board meetings and subsection b in the limitation upon payment of mileage for attendance at such meetings specifically referred to the "calendar year." As distinguished therefrom in subsection c, reference was made merely to the "year" and concluded that the legislature intended to differentiate with respect to the limitation upon the number of compensable days for attendance at committee meetings. The opinion held that the term "year" as used in such limitation in subsection c referred to the "organizational year" instead of the "calendar year."

Referring again to the history of House Bill 103 of the 1960 session of the legislature, the amendment adopted by the House of Representatives placing a total annual limitation upon the number of compensable days refers specifically to the "calendar year." Admittedly, the effect of the Senate amendment was to make such total annual limitation applicable to only counties having the specified population. To apply that term only to the limitation upon the total annual compensable days of the members of the board in counties having the necessary population to bring them within the exception would of necessity differentiate between those counties and the remaining counties of the state. There is no evidence of legislative intent to differentiate in that respect. In fact the House amendment which utilizes the term "calendar year" when adopted would have been applicable to the members of the board of supervisors of each of the 83 counties of the state. Furthermore, such construction of the term "year" as used in subsection c is consistent with the general statutory definition¹¹ of the term reading:

"The word 'month' means a calendar month; the word 'year,' a

¹⁰ O.A.G. 1957-58, Vol. I, No. 2977, p. 223.

¹¹ C.L.S. 1961 § 8.3j; M.S.A. 1961 Rev. Vol. § 2.212(10).

calendar year; and the word 'year' alone shall be equivalent to the words 'year of our Lord'."

It is, therefore, my opinion that members of the board of supervisors of Berrien County, aside from the chairman, are limited to a total of 60 compensable days of committee work on days upon which the board of supervisors is not in session during a calendar year.

FRANK J. KELLEY,
Attorney General.

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MUNICIPAL FINANCE COMMISSION: Membership – Quorum.

The present constituency of the Municipal Finance Commission is the Attorney General, the State Treasurer and the Superintendent of Public Instruction, with subordinates appearing in their behalf in the manner provided by law.

The quorum requirement of three members continues in the manner prescribed in the Municipal Finance Act at Chapter II, Section 2(a) which provides that the Commission may act only by order of not less than three members thereof.

No. 4504

August 2, 1966.

E. Boomie Mikrut
Director
Municipal Finance Commission
Lansing, Michigan

Act 202, Public Acts of 1943, as amended,¹ cited as the Municipal Finance Act, provides in part for the creation and membership of a Municipal Finance Commission by stating:

"There is hereby created a commission to be known as the municipal finance commission and to be composed of the state treasurer, the attorney general, the auditor general, and the superintendent of public instruction. Each member of the commission for the purposes of this act, may act under any and all circumstances through his deputy. The attorney general may also act through an assistant attorney general designated by him and the superintendent of public instruction may also act through an officer or employee of his department designated by him."²

The Michigan Constitution of 1963 provides for the appointment of the Auditor General and requires that he be assigned no duties other than those specified therein.³ The only specific duties involved in the constitutional provision are auditing functions under the direction of the legislature.

¹ C.L. '48 § 131.1 et seq.; M.S.A. 1958 Rev. Vol. and 1965 Cum. Supp. § 5.3188(1) et seq.

² C.L. '48 § 132.1; M.S.A. 1958 Rev. Vol. § 5.3188(3).

³ Article IV, Section 53, Michigan Constitution of 1963.