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**CONSTITUTIONAL LAW:
MICHIGAN VEHICLE CODE:**

While Section 29, Article VII of the Michigan Constitution of 1963 provides that control of highways, streets and alleys is reserved to such local units of government, Section 16, Article VII of the Constitution provides an exception thereto, whereby the Legislature is empowered to provide for county road commissioners with powers and duties provided by law. Pursuant to Section 609(b), as amended, of the Michigan vehicle code, a township has no authority to place traffic control devices on county roads located within the township without obtaining the permission of the cognizant county road commission.

DRAIN CODE: Drain orders – non-interest bearing.

The county drain commissioner is neither empowered nor required to add interest to the installment payments to be made by property owners in settlement of assessments made on their property pursuant to drain orders issued by the drain commissioner.

No. 4498

August 29, 1966.

Mr. Donald A. Burge
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Kalamazoo, Michigan

In recent correspondence with this office, you request my opinion on two separate subjects which may be stated as follows:

1. May a township erect or maintain traffic control devices on county roads located within the township without the permission of the county road commission which has jurisdiction of such roads?
2. In preparing a tax assessment roll for the current year pursuant to section 262 of the drain code of 1956, where the proceeds of such taxes will be used to pay installments on non-interest-bearing drain orders, is a county drain commissioner empowered or required to add interest on such installments to the date of tax collection?

The answer to your first question is that no township has authority to place or maintain any traffic control device upon any county road without obtaining permission from the county road commission having jurisdiction thereof. This conclusion is premised upon the following provisions of law.

Section 29 of Article VII of the Michigan Constitution of 1963 provides in applicable part as follows:

"Except as otherwise provided in this constitution the right of all counties, townships, cities and villages to the reasonable control of their highways, streets, alleys and public places is hereby reserved to such local units of government." (Emphasis supplied)

Section 16 of said Article VII provides in applicable part as follows:

"The legislature . . . may provide for county road commission-

ers to be appointed or elected, *with powers and duties provided by law.*" (Emphasis supplied)

As recited in Section 29 each local unit of government has reserved to it the reasonable control of its streets and highways, except as otherwise provided by the Constitution. Section 16 contains such an exception and authorizes the legislature to provide for county road commissions and specify their powers and duties.

Section 7 of Article III of the Michigan Constitution of 1963 provides as follows:

"The common law and the statute laws now in force, not repugnant to this constitution, shall remain in force until they expire by their own limitations, or are changed, amended or repealed."

Act 300, P.A. 1949, as amended (C.L.S. 1961, Sec. 257.1, et seq.; M.S.A. 1960 Rev. Vol., Sec. 9.1801, et seq.) entitled the "Michigan vehicle code," was enacted prior to the effective date of the 1963 Constitution but, by virtue of the above-quoted Section 7, two provisions thereof then in effect provide in pertinent part as follows:

(a) Section 609(b), as last amended by Act 76, P.A. 1953, provides in part:

"No local authority shall place or maintain any traffic-control device . . . upon any county road without the permission of the county road commission having jurisdiction thereof."

(b) Section 27 defines "Local Authorities" to be as follows:

"'Local authorities' means every municipal and other local board or body having authority to enact laws relating to traffic under the constitution and laws of this state."

In light of the foregoing, a township would constitute a "local authority" within the meaning of Section 27, P.A. 1949. Therefore, such a township would not have authority to place traffic control devices on county roads located within the township without first obtaining the permission of the cognizant county road commission.

Your second question refers to the drain code of 1956, being Act 40, P.A. 1956, as amended.¹ You make particular reference to the provisions of Section 262 of the drain code and relate your question to the proceeds of drain taxes which will be used to pay installments on non-interest-bearing drain orders. The statutory reference for drain orders issued by the drain commissioner is Section 244 of the Drain Code as a part of Chapter 10 thereof entitled "Inspection and Approval of Construction and Payment for the Drain." A reading of Section 244 of the drain code discloses that the drain orders are issued by the drain commissioner for the payment of services rendered and work performed in the construction of the drain. Taxes are assessed for the benefits received and may be paid under the statute in annual installments. There is no provision in Section 244 of the drain code for the inclusion of interest as a part of the cost

¹ C.L.S. 1961 § 280.1, et seq. and subsequent amendatory acts; M.S.A. 1960 Rev. Vol. and 1965 Cum. Supp. § 11.1001, et seq.

of construction of the drain nor is there any provision therein for the collection of interest on the annual installments if paid on or before maturity.

Section 245 of the drain code requires all drain orders made by the drain commissioner to state the services rendered in brief form and to be numbered and recorded and signed by the commission. When due such order is to be presented to the county clerk for payment. Under Section 245, if the particular drain fund on which the drain order is drawn is insufficient to make payment when the drain order is presented, the county treasurer is required to certify such fact upon the order and thereafter the order shall draw interest at the rate of 6% per annum from the date of presentation until the particular fund is sufficient to pay the same.

Under the prior law, substantially identical in this regard with Section 245 of the drain code, supra, the Attorney General has on two occasions ruled that the drain order did not bear interest prior to the date that the order was due. Interest starts to run only from the date of presentation where the particular fund is insufficient to pay the same. See O.A.G. 1930-32, page 378; O.A.G. 1955-56, Vol. 2, page 292.²

Section 262 of the drain code to which you refer is a part of Chapter 11 entitled "Levy and Collection of Drain Taxes" and was last amended by Act 82, P.A. 1963. In its amended form, to the extent here pertinent, it reads as follows:

"The commissioner shall prepare a tax assessment roll in each year for the collection of taxes for the current year, and shall certify the same to the county clerk on or before the first day of the annual meeting of the board of supervisors. In each such roll he shall add to the amount to be collected, interest on all unpaid installments to the date of tax collection. To the roll for the last year he shall add such further amount, if any, as may be necessary together with outstanding uncollected taxes, to pay all outstanding bonds and interest thereon to maturity. In case such roll is made payable in more than 1 installment, a permanent assessment roll may be maintained in the office of the county treasurer, subject to the direction of the board of county auditors, in counties having such a board, and of the board of supervisors in other counties, showing the total cost, the number of installments and the amount of each annual assessment, together with interest charges thereon, which shall be carried in a separate column."

² The Supreme Court in the case of *People, for use of Lapeer County Bank, v. O'Connell*, 214 Mich. 410, had under consideration drain orders issued by a drain commissioner to the contractor on the drain and in turn discounted before maturity by the contractor at the bank. In discussing the drain orders the Court makes no reference to the inclusion of interest. In the later case of *Gerweck v. Monroe County Treasurer*, 317 Mich. 53, 59, the Court refers to the testimony of the county treasurer regarding the payment of interest on past due drain orders. Although these cases relate to the prior drain law they have some value as showing the attitude of the Supreme Court in passing on drain orders and the extent of the liability thereon.

Section 262 should be read in conjunction with Section 261 of the drain code which also appears in Chapter 11 thereof. Section 261 relates to the computation of the cost of the drain, and the items to be included in such computed cost. Section 261 enumerates 12 items of includable cost to which is to be added a contingency reserve of not less than 10% nor more than 15% at the discretion of the drain commissioner. The sum of the includable items, plus the contingent reserve, shall be deemed to be the cost of construction of the drain. Item 12 of the items so enumerated is "interest on bonds for the first year, if bonds are to be issued,"

Section 275 of the drain code, which is also contained in Chapter 11 thereof, authorizes the issuance of drainage district bonds which shall be payable in annual installments equal in number to the installments of taxes. In issuing bonds, the drain commissioner shall therein pledge the credit of the drainage district, including the lands embraced in such district and the townships, cities, villages, counties and state trunk line highways assessed at large, in the proportion that they are taxed for the benefits received thereby.

Section 278 of the drain code, as last amended by Act 249, P.A. 1965, likewise being a part of Chapter 11, provides in cases where bonds are issued and sold by the drain commissioner all installments of the drain taxes shall bear interest not to exceed the rate of 6% per annum from the date of the preparation of the assessment roll until due.

The foregoing analysis of the selected sections of the drain code appearing in Chapter 11 thereof, in my opinion clearly demonstrate the intention of the legislature that the provisions of Section 262, quoted in part above, apply only where drainage district bonds are to be issued by the drain commissioner and have no application to drain orders pursuant to Chapter 10.³

In my opinion the county drain commissioner is neither empowered nor required to add interest to the installment payments to be made by property owners in settlement of assessments made on their property pursuant to drain orders issued by the drain commissioner.

FRANK J. KELLEY,
Attorney General.

³ I have not disregarded the provisions of Section 265 of the drain code which in substance provides that all drain taxes assessed under the provisions of the act shall be subject to the same interest and charges, and shall be collected in the same manner as state and other general taxes are collected. The Attorney General in Opinion No. 1632 issued February 4, 1953, and reported in O.A.G. 1952-54, page 109, concluded that the interest and charges to be collected upon delinquent drain taxes were controlled by M.S.A. §§ 11.91 and 11.92 of the prior law. Those respective sections are now Sections 265 and 266 of the drain code of 1956, *supra*.