

performed properly by the same person, the general rule is that the inconsistency, which at common law makes offices incompatible, does not consist in the physical impossibility to discharge the duties of both offices, but lies rather in a conflict of interest, as where one is subordinate to the other and subject in some degree to the supervisory power of its incumbent, or where the incumbent of one of the offices has the power of appointment as to the other office, or the power to remove the incumbent of the other, or to audit the accounts of the other, the question being whether the occupancy of both offices by the same person is detrimental to the public interest or whether the performance of the duties of one interferes with the performance of those of the other. Thus, in determining incompatibility, the permanency of the position, the power granted, and the functions actually performed should be considered. * * *"

As above noted, the trustee is a township officer while the coroner is a county officer. Neither has any degree of supervisory power or control over the other. Nor, do any of the powers or duties of the two offices relate to the functions, responsibilities, or duties of the other which would cause a conflict of interest between the two. It follows that the two offices are not incompatible. Accordingly, the same may be held simultaneously by the same individual.

FRANK J. KELLEY,
Attorney General.

661003.1

HOME RULE CITIES – INCORPORATION – TOWNSHIPS

Necessary expenses of a charter commission drafting a charter for a new home rule city being incorporated out of all of a township are to be paid by the first legislative body of the newly incorporated city and the township has no authority to pay such expenses.

No. 4547

October 3, 1966.

Honorable Bruce L. Monks
State Representative
23620 Southland Court
Mt. Clemens, Michigan 48043

You state that the charter commission of the City of Sterling Heights has asked for a formal opinion concerning Section 17¹ of Act 279 of the Public Acts of 1909, as amended, usually referred to as the Home Rule Act, with reference to the payment of necessary expenses incurred while drafting a city charter for a home rule city being incorporated out of all a township.

One of my predecessors rendered an opinion on July 18, 1956² concern-

¹ CLS 1961 § 117.17; MSA 1965 Cum Supp § 5.2096.

² Biennial Report of the Attorney General, Michigan, 1955-1956, Vol. II, p 410, No. 2632.

ing the drafting of a charter for a proposed city composed of a portion of a township, and ruling that the necessary expenses of a charter commission in drafting a charter for a new home rule city being incorporated out of a portion of a township are to be paid by the first legislative body of the newly incorporated city, and that a township is without authority to assume or take on expenses of said charter commission and may not levy a special assessment against the area of proposed incorporation to recover money advanced without authority for the expense of said commission in the event the charter is not adopted and the area of the proposed city reverts to the township.

You state that territory of the proposed city would consist of all the present township and further that this is Sterling Heights' first attempt at drafting a charter.

Section 17 of the Home Rule Act provides in pertinent part as follows:

“. . . The first legislative body assembled pursuant to a charter adopted by the electors of such city, shall provide for the payment of the necessary expenses incurred by the county and by the members of such commission or commissions, but the members of the commission shall receive no compensation for their services . . .”³

Consideration must also be given to Section 15 of the Home Rule Act⁴ as last amended by Act 246, PA 1966, being MSA Cur Mat § 5.2094, which provides further in pertinent part as follows:

“. . . The ballot shall be prepared by the clerk of the county in which the territory is located or if located in more than 1 county, then by the clerk of the county in which the greater portion of the territory is located; the expense to be borne by the county. If the proposed city shall be incorporated as herein provided, the county shall be reimbursed by the city at the time the charter is filed. . . .”

The language of the foregoing statute is clear and unambiguous. The necessary expenses of the county in conducting the election and the necessary expenses of the members of the charter commission or commissions are to be paid by the first legislative body assembled pursuant to the charter adopted by the electors of such city.

There is no provision in the quoted sections or elsewhere in the Home Rule Act for meeting the expenses of any charter commission, be it the first or otherwise, except as provided in the quoted sections. Nor are the quoted provisions restricted with respect to the inclusion of all or only a portion of a township in the proposed city.

Therefore, it is my opinion and I advise you that for reasons set forth in OAG 2632, a township has no authority to incur legal fees, consultant fees, miscellaneous expenses or any other expenses incurred while formulating the charter for the reason that the township has no authority to pay such expenses and for the further reason that the quoted provisions of the

³ Footnote 1, *supra*.

⁴ MSA Cur Mat § 5.2094.

statute place the obligation to pay such expenses upon the county with reimbursement by the first legislative body assembled pursuant to the charter adopted by the electors of the city.

FRANK J. KELLEY,
Attorney General.

661026.1

**CRIMINAL SEXUAL PSYCHOPATH:
MENTAL HEALTH, STATE DEPARTMENT OF:
COURTS:
CRIMES AND CRIMINAL OFFENSES:**

Criminal sexual psychopath may be extradited if he leaves the state without permission contrary to Act 217, PA 1963, and if he is the subject of a warrant issued for such offense.

No. 4341

October 26, 1966.

Robert A. Kimmich, M.D.
Director
Department of Mental Health
Lewis Cass Building
Lansing, Michigan

You have asked my opinion concerning the implementation of Act 217, PA 1963, which provides in full as follows:

"Any criminal sexual psychopathic person under lawful commitment pursuant to the provisions of Act No. 165 of the Public Acts of 1939, as amended, being sections 780.501 to 780.509 of the Compiled Laws of 1948, who leaves the state without permission is guilty of a felony."¹

The statute under which criminal sexual psychopathic persons are committed is Act 165 of the Public Acts of 1939, as amended, sometimes referred to as the Goodrich Act, and found at CL '48 and CLS '61 §§ 780.501 *et seq*; MSA 1954 Rev Vol and Supps § 28.967(1) *et seq*.

Section 1 of the Goodrich Act defines a criminal sexual psychopathic person as "Any person who is suffering from a mental disorder and is not feeble-minded, which mental disorder is coupled with criminal propensities to the commission of sex offenses. . . ."²

The constitutionality of the statute was upheld in *People v. Chapman*, 301 Mich 584 (1942), which also held that the statute relative to commitment of criminal sexual psychopathic persons is not a criminal statute (600), that commitment proceedings do not constitute conviction of crime (608), and that the purpose of the commitment is not punishment for crime but rather to place the patient in the care of the hospital commission until cured of the habit of committing sexual offenses (603). See also *In re*

¹ MSA 1965 Cum Supp § 28.394(2).

² CL '48 § 780.501; MSA § 28.967(1).