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OPINIONS

COUNTIES: Board of Supervisors – Power to fix additional compensation of probate judge.

PROBATE JUDGES: Additional Compensation

PUBLIC OFFICES & OFFICERS: Decrease in compensation during term.

The Michigan Constitution of 1963 prohibits board of supervisors from decreasing the additional compensation of a probate judge during his term of office not in any way made contingent upon population increases or decreases, except and only to the extent of general salary reductions in all branches of the county government.

No. 4571

January 5, 1967.

Mr. Russell W. Bradley
Prosecuting Attorney
832 Tenth Avenue
Menominee, Michigan

You have requested my opinion on the following question:

“Would a budget for the year 1967 setting the salary of the Probate Judge at \$8,000 in a county having a population of 24,717, according to the 1960 census, constitute a reduction in the salary of such official prohibited by the constitution, in view of the 1966 statute requiring a minimum salary of \$8,000 in counties having such population, and in view of the fact that the salary of said officer as fixed prior to commencement of the current term was established in two categories as follows:

Probate Judge	\$6,500
Juvenile Judge	\$1,500”

Act 288, P.A. 1939, as amended, being C.L. 1948 § 701.1 et seq.; M.S.A. 1962 Rev. Vol. and 1965 Cum. Supp., § 27.3178(1) et seq., is known as the Probate Code of 1939.

Section 3 of the Probate Code of 1939, supra, provides that probate judges shall receive an annual salary, payable monthly out of funds of the county, which shall neither be increased nor decreased during the term for which they have been elected, except as changed by the population of their respective counties.

The Attorney General has held that the statutory provisions requiring an automatic increase in the salary of probate judges because of population changes as set forth in the statute effective before the election or appointment of the probate judge did not violate Article XVI, Section 3 of the Michigan Constitution of 1908 barring increases, except for circuit judges, or decreases in the salaries of public officers during their terms of office. O.A.G. 1950-1952, p. 61.

Section 4 of the Probate Code of 1939 specifies the minimum annual salary to be paid the probate judges of the several counties in Michigan based upon the population of the county. The present minimum statutory

annual salary to be paid to a probate judge in counties with a population of 20,000 and less than 25,000 is \$6,500. The statute provides further that the county board of supervisors may pay an additional salary to the probate judge as it deems just.

Pertinent to your question, Act 315, P.A. 1966, to be effective 90 days after the date that the legislature adjourns its 1966 regular session sine die, amends both Sections 3 and 4 of the Probate Code of 1939, supra. As so amended, Section 3 will read, in part, that each probate judge shall receive an annual salary based upon the population of the counties, one-half to be paid by the state and one-half by the county, which may be increased but shall not be decreased during the term for which they shall have been elected, except to the extent of general salary reduction in all the branches of government.

Section 4, as amended by Act 315, P.A. 1966, will provide, in pertinent part, that in counties having a population of 20,000 and less than 25,000 the annual salary of a probate judge shall be \$8,000.00. In addition the board of supervisors of the county is empowered to pay an additional salary to the probate judge, but the total salary for a probate judge shall not exceed \$29,000.00 per year.

Article VI, Section 18 of the Michigan Constitution of 1963 provides that the salaries of "the probate judges within a county or district, shall be uniform, and may be increased but shall not be decreased during a term of office except and only to the extent of a general salary reduction in all other branches of government."

As it applies to probate judges, Article VI, Section 18 of the 1963 Constitution is unlike Article XVI, Section 3 of the 1908 Michigan Constitution which commanded that the salaries of public officers, "except circuit judges, shall not be increased, nor shall the salary of any public officer be decreased, after election or appointment."

The office of probate judge is created by the Michigan Constitution. The jurisdiction, powers and duties of the probate courts and of the judges thereof shall be provided by law. Except as otherwise provided by law, they shall have original jurisdiction in all cases of juvenile delinquency. Michigan Constitution of 1963, Article VI, Sections 15 and 16.

The jurisdiction, powers and duties of the probate courts and of the judges thereof are set forth in the Probate Code of 1939, supra. In Chapter XIIa of the Probate Code of 1939, supra, the legislature has made provision for juveniles. The probate court is termed the juvenile division of the probate court while proceeding under Chapter XIIa.

Previous statutory provision relating to juveniles is found in Act 6, P.A. 1907, Extra Session. Section 2 of the act confers original jurisdiction upon the probate court in all cases coming within the terms of the act, and while proceeding under the act the probate court is termed the juvenile division of the probate court. Section 9 of the act provided for additional compensation for judges of probate for services performed under the act. It must be observed that this act did not create an office of juvenile court judge, but rather a juvenile division within the probate court. Section 9 of Act 6, P.A. 1907, was amended by Act 203, P.A. 1929 to increase the compensation of certain probate judges for services performed under the act.

The Attorney General in O.A.G. 1933-34, page 212, upheld the authority of the legislature to provide additional compensation for probate judges while performing duties within the juvenile division of the probate court.

As originally enacted, Section 4 of the Probate Code of 1939, provided for the annual salary of probate judges, based upon the population of the county in which the probate judge served. In addition, the statute provided that judges of probate shall receive for their service as judges of the juvenile court an additional sum also based upon the population of the county. The statute also provided that the board of supervisors in any county may by a majority vote of all the members elect give such additional salary to the judge of probate of the county as it shall be deemed just. The legislature amended Section 4 of the Probate Code of 1939 by means of Acts 242 and 276, P.A. 1952, to eliminate the additional compensation for their services as judges of the juvenile court. In the process the legislature struck the statutory reference to the judge of juvenile court. Section 4 was also amended by Act 276, P.A. 1952 to make certain changes in the annual salary to be paid to probate judges. The Attorney General has reviewed the legislative history of Section 4 of the Probate Code of 1939 in Opinion No. 3176, O.A.G. 1957-58, Vol. I, page 568.

It must follow that a probate judge when he exercises powers under Chapter XIIa of the Probate Code of 1939 acts as a probate judge within the juvenile division of the Probate Court.

In Section 4 of the Probate Code of 1939, as amended, the legislature has acted as a salary-fixing body to fix the minimum annual salary to be paid to a probate judge. At the present time the minimum annual salary fixed by the legislature for the probate judge in Menominee County is \$6,500. When Act 315, P.A. 1966 becomes effective the minimum annual salary for such probate judge shall be \$8,000.

By resolution the board of supervisors of Menominee County has heretofore voted to pay the probate judges the sum of \$6,500 as probate judge and \$1,500 as juvenile judge. Fairly construed, the board of supervisors has voted an additional salary of \$1,500 over and above the minimum statutory salary of \$6,500. See *Alcona County v. Alcona Probate Judge*, 311 Mich. 131, 142 (1945).

The controlling provision in the Michigan Constitution of 1908, which prohibited the increase or decrease in the salaries of public officers after election or appointment, except that increases in salaries was permitted in the case of circuit judges, was Article XVI, Section 3. This section of the 1908 Constitution has been construed by the Michigan Supreme Court to bar boards of supervisors as salary-fixing bodies from decreasing salaries during the term of office of circuit judges in *Gillespie v. Board of County Auditors of Oakland County*, 267 Mich. 483 (1934), and justices of the peace in *Holland v. Adams*, 269 Mich. 371 (1934).

The Attorney General has ruled that probate judges are entitled to that part of annual salary fixed by the board of supervisors in addition to the statutory minimum at the level established prior to election or appointment even though the statutory minimum was increased because of population changes based upon the most recent federal decennial census unless the board of supervisors made such additional salary contingent upon popula-

tion so as to provide for automatic changes. O.A.G. 1951-52, p. 61. See also *Rathbun v. Board of Supervisors of Lenawee County*, 275 Mich. 479 (1936).

Under these decisions the constitutional prohibition against decreases in salaries was held to apply to all public officers having fixed terms and to all salary-fixing bodies.

While the people have not retained the general prohibition against decreases in salaries of public officers during their terms of office found in Article XVI, Sec. 3 of the Michigan Constitution of 1908 in the precise form in the 1963 Constitution, they have nevertheless mandated in Article VI, Sec. 18 that the salaries of probate judges may be increased but shall not be decreased during a term of office except and only to the extent of a general salary reduction in all other branches of government. Such prohibition against decreasing salaries of probate judges must be held to apply to all salary-fixing bodies. Article VI, Section 18 of the Michigan Constitution of 1963 bars the board of supervisors of a county from decreasing the additional compensation of a probate judge during his term, except and only to the extent of general salary reduction in all branches of the county government.

Therefore, it is the opinion of the Attorney General that a board of supervisors that has fixed additional compensation for a probate judge is prohibited from decreasing such additional compensation during the term of office of such probate judge, except and only to the extent of general salary reductions in all branches of the county government.

FRANK J. KELLEY,
Attorney General.

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CONSERVATION, DEPT. OF: Forest fire prevention — issuance of burning permits.

TOWNSHIPS: Effect of township burning permits.

The provisions of Section 7 of Act 143, Public Acts of 1923, as amended and those of Section 4 of Chapter 45, Revised Statutes of 1846 are not in conflict but give to the Director of Conservation and each township board concurrent supervision over the issuance of burning permits.

Any burning on forest lands, woodlands, grass lands, or of brush or slash must be done consistently with the terms of the Conservation Department permit and the requirements of the township in which the burning takes place.

No. 4533

January 10, 1967.

Dr. Ralph A. MacMullan, Director
Michigan Department of Conservation
Lansing, Michigan 48926

Your letter of May 20, 1966 concerning the question of issuance of burning permits raises the following questions:

"1. If an authorized representative of the Director of Conservation