

of a home office. Any actions taken in this regard would be subject to judicial review under Article VI, Sec. 28 of the Michigan Constitution of 1963.

FRANK J. KELLEY,
Attorney General.

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JUDGES: Municipal — Right of legislature to abolish office during term.

The legislature may abolish the office of municipal judge during the term for which certain judges have been elected and, except for accrued pension rights, the effect of such action would be to terminate the right of those judges to further compensation.

No. 4609

October 3, 1967.

Hon. Basil W. Brown
Hon. Robert Richardson
State Senators
The Capitol
Lansing, Michigan

Hon. Robert Traxler
Hon. Donald E. Holbrook, Jr.
State Representatives
The Capitol
Lansing, Michigan

You have requested an opinion on the following questions:

“(1) May the Legislature abolish the office of municipal judge during the term for which certain of the judges have been elected?”

“(2) If the Legislature does abolish the office of municipal judge during the term of a judge, is the municipality obligated to pay the salary and pension benefits to the judge for the balance of the term for which he was elected?”

There is a well established general rule of law which is applicable to both of these questions. It may be stated that in the absence of constitutional restrictions an office created by the legislature may be abolished by it, and when so abolished the incumbent has no further right to compensation. This rule was first enunciated in Michigan by Justice Cooley in *City of Wyandotte v. Jeremiah Drennan*, 46 Mich. 478, 480, 481 (1881):

“. . . Nothing seems better settled than that an appointment or election to a public office does not establish contract relations between the person appointed or elected and the public. The leading case of *Butler v. Pennsylvania*, 10 How. 402, has been universally regarded as having settled that question; and it has been followed by decisions in numerous cases. . . .

“. . . Offices are created for the public good at the will of the legislative power, with such powers, privileges and emoluments attached as are believed to be necessary or important to make them accomplish the purposes designed. But except as it may be restrained by the Constitution the Legislature has the same inherent authority to modify or abolish that it has to create; and it will exercise it with the like considerations in view. Whoever accepts a public office must accept it with this principle of constitutional law in view; and if his compensation

is reduced below what seems to him reasonable, it may be a hardship, but it is not a legal wrong. The legislative power is ample, and he is supposed to know when he takes the office that it is liable to be exercised. . . ."

It should, however, be noted that pursuant to Article IX, Section 24 of the Michigan Constitution of 1963, the accrued financial benefits of any pension plan for any municipal judge may not be diminished or impaired.

Some of the basic public acts governing the establishment of a municipal court are the Municipal Court Act (sometimes known as the Flint Act), being Act 269, P.A. 1933 as amended, C.L. 1948 and C.L.S. 1961 § 730.101 et seq.; M.S.A. 1962 Rev. Vol. § 27.3831 et seq.; the Home Rule Cities Act, being Act 279, P.A. 1909 as amended, particularly Sections 28 through 30, C.L. 1948 § 117.28 through § 117.31; M.S.A. 1949 Rev. Vol. § 5.2107 through § 5.2110; and the Michigan Uniform Municipal Court Act, being Act 5, P.A. 1956 as amended, C.L.S. 1961 § 730.501 et seq.; M.S.A. 1962 Rev. Vol. § 27.3937(1) et seq. Sections 22 and 23 of the act were amended by Act 54, P.A. 1963, Second Extra Session.

It is to be noted that while the constitution authorizes municipal courts, they are created by the legislature. In *Dunham v. Tilma*, 191 Mich. 688, 692 (1916), the court said:

" . . . They [municipal courts] are not created by the Constitution, but only authorized and permitted. They derive all of their powers from the legislature. . . ."

Article VI, Section 26 of the Michigan Constitution of 1963 expressly recognizes the right of the legislature to abolish such courts in the following terms:

"Statutory courts in existence at the time this constitution becomes effective shall retain their powers and jurisdiction, except as provided by law, until they are abolished by law."

The case of *Attorney General v. Guy*, 334 Mich. 694, 703 (1952), answers by clear implication the questions here being discussed. In that case it was held that a home rule city may by charter amendment abolish an office of municipal judge during the term of the incumbent:

"The office of municipal judge is not a constitutional one. It was created by charter amendment pursuant to provisions of the statutes of Michigan, under legislative authority, and can be legally abolished in the same manner. It need not be abolished by a constitutional amendment. . . ."

As the charters of home rule cities are subject to the general laws of the legislature, the legislature could similarly abolish such offices by general act. C.L. 1948 § 117.36; M.S.A. 1949 Rev. Vol. § 5.2116. *City of Hazel Park v. Municipal Finance Commission*, 317 Mich. 582 (1947).

To avoid possible confusion that might result from the fact that a municipal judge exercises the powers and duties of a justice of the peace,¹ if the legislature does not abolish the office of justice of the peace at an

¹ *Kates v. Reading*, 254 Mich. 158 (1931).

early date, any statute abolishing this office having an effective date prior to January 1, 1969 (the date that Article VI, Section 26 of the Michigan Constitution provides for automatic abolition of the office of justice of the peace) should also expressly abolish the office, powers, duties and jurisdiction of justices of the peace which may be attached to such office in affected municipalities.

Accordingly, it is my opinion that the legislature may abolish the office of municipal judge during the term for which certain judges have been elected, and the effect of such action would be to terminate the right of those judges to further compensation.

FRANK J. KELLEY,
Attorney General.

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RESIDENTIAL BUILDING CONTRACTORS: Department of Licensing and Regulation – Authority to investigate complaints.

The Department of Licensing and Regulation is limited to the investigation of only written verified complaints and if made within one year by the proper authorities when such complaints pertain to those acts enumerated in the last paragraph of Sec. 9 of Act 383, P.A. 1965, as amended.

The department may upon its own motion, or upon the written complaint of any person made within 18 months, investigate the actions of any residential builder regarding those acts enumerated in Sec. 9 (a) - (r) of Act 383, P.A. 1965, as amended.

No. 4593

October 4, 1967.

Mr. Lenton G. Sculthorp, Director
Department of Licensing and Regulation
1033 So. Washington Avenue
Lansing, Michigan 48910

You have requested my opinion regarding Section 9 of the residential building contractors law, Act 383, P.A. 1965, as amended by Act 153, P.A. 1967, M.C.L.A. § 338.1509; M.S.A. 1965 Cum. Supp. and Cur. Mat. § 18.86(109). Section 9 reads as follows:

“The commission may, upon its motion or upon the complaint in writing of any person made within 18 months after completion, occupancy or purchase of a residential or combination of residential and commercial building, investigate the actions of any residential builder or residential maintenance and alteration contractor or salesman or any person who shall assume to act in such capacity within the state, and shall have the power to suspend or revoke any licenses issued under the provisions of this act or deny any pending application at any time where the licensee or applicant is performing or attempting to perform any of the acts mentioned herein:

(a) Abandonment without legal excuse of any construction project or operation engaged in or undertaken by the licensee.