

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.

(b) Diversion of funds or property received for prosecution or completion of a specific construction project or operation, or for a specific purpose in the prosecution or completion of any construction project or operation, and their application or use for any other construction project or operation, obligation or purposes.

(c) Failure to account for or to remit for any moneys coming into his possession which belong to others.

(d) Wilful departure from or disregard of plans or specifications in any material respect and prejudicial to another, without consent of the owner or his duly authorized representative and without the consent of the person entitled to have the particular construction project or operation completed in accordance with such plans and specifications.

(e) Wilful violation of the building laws of the state or of any political subdivision thereof.

(f) Misrepresentation of a material fact by an applicant in obtaining a license.

(g) Making any substantial misrepresentation, or making any false promise of a character likely to influence, persuade or induce.

(h) In maintenance and alteration contracts, failure to furnish to a lender, the purchaser's signed completion certificate executed upon completion of the work to be performed under the contract.

(i) Failure to notify the commission within 30 days of the change of name and/or the principal business location of the licensee.

(j) Failure to notify the commission within 10 days of the change of a partner, trustee, director, officer, member and/or shareholder, or the change of name of any such person.

(k) Failure to deliver to the purchaser the entire agreement of the parties including all finance and other charges arising out of or incidental to the agreement when such agreement involves repair, alteration or any addition to, subtraction from, improvement of, movement of, wrecking of, or demolition of a residential structure or combination of residential and commercial structure, or building of a garage, or laying of concrete on residential property, or manufacture, assembly, construction, sale or distribution of a residential or combination residential and commercial structure which is prefabricated, preassembled, precut, packaged or shell housing.

(l) Insolvency, filing in bankruptcy, receivership or assigning for the benefit of creditors.

(m) Failure by a salesman to pay over immediately upon receipt all moneys received by him in connection with any transactions governed by the provisions of this act to the residential builder or residential maintenance and alteration contractor under whom he is licensed.

(n) Aiding or abetting an unlicensed person to evade the provisions of this act, or knowingly combining or conspiring with, or acting as agent, partner or associate for an unlicensed person, or allowing one's license to be used by an unlicensed person.

(o) Acceptance of a commission, bonus or other valuable consideration by any salesman for the sale of any goods or the performance of any service specified in the act from any person other than from the residential builder or residential maintenance and alteration contractor under whom he is licensed.

(p) Conviction for a felony in connection with operations as a builder, salesman or a contractor.

(q) The violation of any of the provisions of this act; and

(r) Any conduct, whether of the same or of a different character than hereinbefore specified, which constitutes dishonesty or unfair dealings.

"This act shall not be construed to relieve any person from civil liability or criminal prosecution under the general laws of this state, and complaints pertaining to the erection, construction, replacement, repair, alteration, additions to, subtractions from, improvement, movement of, wrecking or demolition of any building covered by the provisions of this act shall only be considered by the commission if made by written, verified complaint within 1 year after completion, occupancy or purchase of said structure by the proper authorities charged with the enforcement of the laws governing the construction of residential or a combination of residential and commercial buildings in the various political subdivisions of the state."

(Under the Executive Organization Act (Act 380, P.A. 1965, § 330, M.C.L.A. § 16.430; M.S.A. Cur. Mat. § 3.29(330), all powers, duties and functions of the Michigan Corporation and Securities Commission relative to residential building contractors were transferred to the Department of Licensing and Regulation.)

You have asked six questions which will be taken in their proper order:

1. Whether the language in the last paragraph of Section 9 (unnumbered) acts as a limitation upon the jurisdiction of the department to investigate, suspend, revoke, or deny the license for "complaints pertaining to the erection . . . of any building covered by the provisions of this act," to written or verified complaints filed within one year by the proper authorities?

The language does so limit the department. The pertinent provision of the act reads:

" . . . complaints pertaining to the erection, construction . . . or demolition of any building covered by the provisions of this act shall only be considered by the commission if made by written, verified complaint within 1 year after completion . . . of said structure by the proper authorities . . ."

The present act repealed the former acts, Act 311, P.A. 1939, as amended, and Act 208, P.A. 1953, as amended, on this subject and enacted additional regulations.

When Act 383, introduced as Senate Bill 516, was passed by the Senate, 2 Mich. Senate Journal 1965, page 1296, the last paragraph of Section 9 read:

“. . . complaints pertaining to the erection, construction . . . or demolition of any building covered by the provisions of this act shall only be considered by the commission if justified by the proper authorities.”

When the bill reached the House, however, it was amended by striking out the words “if justified” and inserting the following: “if made by written verified complaint within one year after completion, occupancy or purchase of said structure.” 3 Mich. House Journal 1965, page 2227.

Because of the variances between the Senate Bill and the House amendments, a conference committee was established. Their recommendation was that the Senate concur in the House amendment of Section 9, which the Senate did. 3 Mich. Senate Journal 1965, page 2054.

The effect, therefore, in amending Section 9 was to specifically enumerate the requisites by which the commission could receive a complaint which pertained to the erection, construction . . . or demolition of the buildings covered by the act. The requisites are threefold:

1. The complaint must be in writing;
2. It must be verified by the proper authorities;
3. The complaint must be received from the proper authorities within one year after completion, occupancy or purchase of the structure.

2. What is meant by “verified” when referring to a written verified complaint?

The act is silent as to the requirements of a verified complaint. However, a search into case law will answer your question.

The term “verified” has a settled meaning and refers to an affidavit as to the truth of the matters set forth within personal knowledge of the affiant. *Kelley v. City of Flint*, 251 Mich. 691 (1930).

3. Who are the proper authorities charged with the enforcement of the laws in the political subdivisions of the state?

The proper authorities in the political subdivisions would be whoever have been delegated jurisdiction to enforce the act.

The answer, in turn, necessitates a review of legislative enactments which confer upon municipalities and the state authority to enforce the building laws in the various political subdivisions of the state.

By Act 279, P.A. 1909, Sec. 3, as last amended by Act 43, P.A. 1967; M.C.L.A. § 117.3; M.S.A. Cur. Mat. § 5.2073, home rule cities are authorized as follows:

“Each city charter shall provide: \* \* \*

“(j) For the public peace and health and for the safety of person and property;

“(k) For adopting . . . city ordinances . . . Each city shall have power, whether so provided in its charter or not, to adopt . . . any building code . . . which [has] been promulgated by the state of Michigan or by any department, board, or other agency thereof, . . .”

Section 8 of Chapter XIV of the fourth class cities act, Act 215, P.A.

1895, as amended, C.L. 1948 § 94.8; M.S.A. 1949 Rev. Vol. § 5.1764, provides that the council of any city under the act "may establish a board of health for the city . . . and . . . invest it with such power and authority as may be necessary for the protection and preservation of the health of the city. . ."

Also Section 1 of Chapter XI of the fourth class cities act authorizes cities incorporated pursuant thereto to enact ordinances for "the safety, order and good government of the city, and the general welfare of the inhabitants thereof; . . ." C.L. 1948 § 19.1, M.S.A. 1949 Rev. Vol. § 5.1740.

Under the housing law of Michigan, Act 167, P.A. 1917, as amended, C.L. 1948 § 125.401 et seq.; M.S.A. 1958 Rev. Vol. § 5.2771, et seq., the legislature provides regulation for the maintenance, alteration and improvement of dwellings. The act applies to every city and organized village which has a population of 100,000 or more, as well as others that meet specified criteria.

Section 9 of the housing law confers upon the state board of health the power to examine into the enforcement of the act, while Sections 4, 99, 111, 112 and 113 empower the local health officer, or such appropriate public official as the mayor or the president may designate, to enforce the act.

In answering your question, I am of the opinion that the "proper authorities" to enforce the act would be the local health department, local building inspectors, or other officials designated by the appropriate local officials. In addition, the state board of health has the power to examine into the enforcement of the said housing law.

4. Whether the department, under the language of Section 9(q) and (r) of Act 383, P.A. 1965, as amended by Act 153, P.A. 1967, supra, can make an investigation within 18 months of any of the complaints enumerated in the last paragraph of Section 9?

The department is limited to the one-year requirement when the complaints pertain to the erection, construction, replacement, repair, alteration, addition to, subtraction from, improvement, movement of, wrecking or demolition of any building covered by the act.

It is a general rule of law that every provision of a statute should be read as to harmonize and reconcile every other part so that each shall be effective. Of course, if the two provisions are irreconcilable, the one which expresses the intent of the lawmakers should control. However, the provisions of Section 9(q) and (r) can be reconciled and harmonized with the last paragraph of Section 9.

Section 9(q) is of a general nature covering all other provisions found in the act except where a provision is specifically enumerated. The general wording of Section 9(q) cannot be applied to the last paragraph of Section 9 because of the specific wording therein.

Under the authority of Section 9(r), the department is authorized to investigate a complaint in which the conduct of the residential builder constituted dishonest or unfair dealings. The department may conduct an investigation upon its own motion, or upon the complaint in writing of

any person made within 18 months after completion, occupancy or purchase of the building. If the complaint pertains to the erection, construction . . . or demolition of a building (Sec. 9, last paragraph unnumbered), and unfair or dishonest dealings are involved, the department may investigate under the authority of Section 9(r).

5. If the jurisdiction of the department is limited to one year by the last paragraph of Section 9, does the limitation only apply to complaints based on structural defects and poor workmanship in the "erection, construction . . . or demolition of any building covered by . . ." the act, or does it apply to all types of complaints itemized in Section 9 (a) - (r) and the last paragraph of Section 9?

Where structural defects and poor workmanship are the sole basis of complaint, the one-year limitation applies.

However, if any of the causes for complaint which are enumerated in Section 9 (a) - (r) are also involved, then the department is bound by the 18-month limitation. This, I believe, would be consistent with the intent of the legislature.

6. Whether the department is limited by either the 18-month limitation or the one-year limitation to the type of complaint it can investigate upon its own motion?

A plain reading of Section 9 indicates that the department may, upon its own motion, investigate the complaints enumerated in Section 9 (a) - (r), and as such would be governed by the 18-month limitation. The department is not given the jurisdiction to investigate upon its own motion those complaints listed in the last paragraph of Section 9.

FRANK J. KELLEY,  
*Attorney General.*