

690813.4

ELECTIONS: Liquor Referendum.

The Liquor Control Commission is without authority to invalidate a liquor referendum election.

No. 4661

August 13, 1969.

The Honorable Thomas F. Schweigert
The Senate
State Capitol Building
Lansing, Michigan

You have advised me that the voters of several villages have approved the sale of spirits for consumption on the premises at general state elections held in November. However, in each case, the Michigan Liquor Control Commission has rejected the election results based upon opinion of the Attorney General, No. 1164, issued on February 9, 1959.¹ You wish to know whether the Liquor Control Commission's actions were in accordance with the law.

Section 56 of the Michigan liquor control act,² provides in pertinent part:

"Spirits for consumption on the premises, in addition to beer and wine, may be sold by restaurants, hotels and establishments, approved by the commission under this act, in the following cities and villages or townships; * * * a petition may be filed with the city or village or township clerk, as the case may be, requesting the submission of the question of sale of spirits for consumption on the premises, in addition to beer and wine. * * * The city or village or township clerk, as the case may be, shall submit such question at the *next regular state election*, held in such city, village or township: * * *"

O.A.G. No. 1164 concluded that the phrase, "next regular state election held in such city, village or township" as applied to villages meant the next regular village election held pursuant to state law. As a consequence, in most cases since the issuance of said opinion, liquor referendum elections have been held in villages at the time of the regular village election rather than at the time of the regular state election in November.

It must be pointed out that O.A.G. No. 1164 did not hold that the Michigan Liquor Control Commission could reject the results of, or challenge, any election. That opinion was limited to a discussion of the future application of Section 56 of the Michigan liquor control act with respect to the proper time for holding liquor referendum elections in villages. It did not in any way authorize the Liquor Control Commission to challenge the results of any liquor referendum election because the validity of such elections may only be tested in accordance with the statutes of this State.

In *Finlayson v. Township of West Bloomfield* (1948) 320 Mich. 350, the Michigan Supreme Court had before it the question of whether a township liquor referendum election was valid. The plaintiffs brought an ac-

¹ O.A.G. 1949-50, page 460.

² Sec. 56 of Act 8, P.A. 1933 (Ex. Sess.) as last amended by Act 82, P.A. 1957, being M.C.L.A. § 436.56, M.S.A. 1969 Cum. Supp. § 18.1027.

tion for a declaratory decree. The defendant township argued that the election could only be challenged by a quo warranto proceeding. The statutes providing for quo warranto proceedings have not been substantively altered and now appear in Section 4545 of the Revised Judicature Act,³ which reads in pertinent part:

“(1) An action may be brought in the circuit court of any county of this state whenever it appears that material fraud or error has been committed at any election in such county at which there has been submitted any constitutional amendment, question, or proposition to the electors of the state or any county, township, or municipality thereof.

“(2) Such action shall be brought within 30 days after such election by the attorney general or the prosecuting attorney of the proper county on his own relation, or on the relation of any citizen of said county without leave of the court, or by any citizen of the county by special leave of the court or a judge thereof. Such action shall be brought against the municipality wherein such fraud or error is alleged to have been committed.”

Since the language remains identical except for draftsmanship changes, the following statements and holdings of the Michigan Supreme Court in *Finlayson, supra*, appearing at p. 355, remain valid.

“With reference to these sections of the statutes it was said in *Youells v. Morrish*, 218 Mich. 194:

“ ‘A reading of these new sections clearly evidences, we think, this legislative intent: That where it is claimed there was fraud or there was error, invalidity, in an election at which any constitutional amendment, question or proposition has been voted upon, the proceedings to test the election must be against the municipality affected by the proceedings and must be brought within 30 days after the election. The purpose of the change is clearly apparent; the municipality to be affected by the proceedings should have an opportunity to be heard, and public policy requires that there should be a speedy determination of the validity of the election before engagements are entered into by such municipality.’

“* * *

“ ‘The remedy provided in this statute is *exclusive* and must be brought within 30 days after such election. 3 Comp. Laws 1929 § 1 5299 (Stat. Ann. § 27.2343); *Youells v. Morrish*, 218 Mich. 194, wherein it is said: “To assail such proceedings he (the petitioner) must do so in the manner pointed out by the statute.” ’ ” (Emphasis supplied)

The Supreme Court concluded that since the plaintiffs had not filed a petition for a quo warranto writ within the required 30 days and such was the exclusive remedy provided by law for the challenging of such an election, plaintiffs were not entitled to have their action considered belatedly as a petition for a quo warranto writ.

³ Act 236, P.A. 1961, M.C.L.A. § 600.4545, M.S.A. 1962 Rev. Vol. § 27A.4545.

We may conclude from the above that there is only one way properly to test the validity of a liquor referendum election; that method set forth in Section 4545 of the Revised Judicature Act. The Michigan Liquor Control Commission cannot set aside the results of an election. The validity of the election must be challenged in the manner set forth in Section 4545 of the Revised Judicature Act within 30 days of such election. Under Section 56 of the Michigan liquor control act, *supra*, the extent of the Liquor Control Commission's authority is to approve the restaurant, hotel or establishment in accordance with the provisions of the Michigan liquor control act. There is no authority expressed or implied in Section 56 of the Michigan liquor control act which repeals directly or by implication the provisions of Section 4545 of the Revised Judicature Act.

In O.A.G. 1949-50, page 554, the Attorney General pointed out that the results of a special election were invalid but, it may be noted, that he did not indicate therein the procedure to be followed in implementing this conclusion. Neither the Attorney General nor the Liquor Control Commission can set aside an election and the former opinion should not be so read.

FRANK J. KELLEY,
Attorney General.

690813.1

CONSTITUTIONAL LAW: Formal Sessions of Governing Boards.

COLLEGES & UNIVERSITIES: Formal Sessions of Governing Boards.

Whenever the governing board of an educational institution of higher learning is convened in accordance with established rules of such body for the transaction of business, it must convene in public session to which the members of the public are to be admitted. Private or executive meetings not held in accordance with established rules or where no business of the board is transacted are not formal sessions. Such private or executive meetings should be discouraged.

No. 4676

August 13, 1969.

Hon. Phillip O. Pittenger
State Representative
The Capitol
Lansing, Michigan

Dear Representative Pittenger:

You have requested my opinion on the following question:

May the governing body of an educational institution granting baccalaureate degrees hold closed or private or executive sessions without violating the Constitution?

Article VIII, Sec. 4 of the Michigan Constitution of 1963 provides:

"The legislature shall appropriate moneys to maintain the University of Michigan, Michigan State University, Wayne State Uni-