

700130.2

**PUBLIC OFFICERS AND OFFICES: Dual office holding prohibited by statute.**

**COUNTY: Board of supervisors, members holding second office.**

**COUNTY: Sanatorium, board of trustees, member may not be member of county board of supervisors.**

**COUNTY: Sanatorium, board of trustees, waiver of compensation payable to members.**

Since the amendment by Act 15, P.A. 1962, to the act governing county sanatoriums which provides for compensation payable to members of the hospital board of trustees, an incumbent member of the county board of supervisors may not also serve as a member of the board of trustees.

The ineligibility of an incumbent member of the board of county supervisors to serve as a member of the hospital board of trustees would not be removed by his waiver of any compensation payable for service as a member of the board of trustees.

No. 4690

January 30, 1970.

Mr. Bruce A. Barton  
Prosecuting Attorney  
County Building  
Jackson, Michigan 49201

You have requested on behalf of the board of county supervisors of Jackson County my opinion on two questions. They will be answered seriatim:

“May a member of the County Board of Supervisors (or Board of Commissioners after the effective date of Act 137, P.A. 1969) be appointed and serve as a member of the Board of Trustees of a County Sanatorium established and operating under the provisions of Act 177, P.A. 1925, as amended?”

Similar issue was the subject of two prior Attorney General opinions. In the first of these, O.A.G. 1943-44, No. 24712, p. 119, it was ruled that there was nothing to prohibit the appointment of a member of the board of county supervisors as a member of the board of trustees of a county sanatorium and his serving in that capacity during his term of membership on the county board of supervisors. Such holding recognized the general prohibition of section 30a of Act 156, P.A. 1851, M.C.L.A. § 46.30a, M.S.A. 1961 Rev. Vol. § 5.353(1), reading:

“No member of the board of supervisors of any county shall be eligible to receive, or shall receive, any appointment from, or be employed in any capacity whatsoever, by any officer, board, committee or other authority of such county. . . .”

However, the opinion was based on the following proviso of the same section:

“. . . Provided further, That nothing in this act contained shall be construed to limit or prohibit the right of any member of the

board of supervisors of any county . . . from accepting from the board of supervisors any office or appointment wherein there is no salary to be paid for services therefor: . . .”

That holding was reaffirmed by O.A.G. 1952-54, No. 1683, p. 190. The latter opinion was occasioned by the fact that the board of supervisors of Jackson County had taken action purporting to authorize payment to the members of the board of trustees of a county sanatorium per diem compensation at the same rate as members of the board of supervisors received for attendance at committee meetings of that board. It was also pointed out that payment of any compensation, but not reimbursement of expenses, to a member of the board of trustees of a county sanatorium was prohibited by section 10 of Act 177, P.A. 1925, C.L. 1929 § 7053, C.L. 1948 § 332.160. It was held, however, that in view of the statutory prohibition against payment of any compensation to member of the board of trustees in C.L. 1948 § 332.160, that action by the board of county supervisors was but a nullity and did not disqualify an incumbent member of the board from holding the two offices simultaneously.

Since then, however, section 10 of Act 177, P.A. 1925, has been amended by Act 15, P.A. 1962, so as to read in part:

“Each trustee may receive not to exceed \$15.00 per day for his services in attending meetings of the board, and not to exceed 7 cents per mile for each mile necessarily traveled in going to and returning from the place of meeting each day the board is in session, when the rate of compensation and mileage as herein provided is approved by the board of supervisors, and such other necessary expenses as shall be allowed by the board of supervisors. No trustee shall claim reimbursement for attending more than 24 meetings a year. . . .”  
M.C.L.A. § 332.160, M.S.A. 1969 Rev. Vol. § 14.1100.

The effect of such amendment is to render inapplicable the above-quoted proviso of section 30a of Act 156, P.A. 1851, and to render any member of the board of supervisors ineligible for appointment as a member of the board of trustees of the county sanatorium. This brings me to your second question:

“Would such service by a Supervisor be proper if compensation as provided in section 10 of Act 177, P.A. 1925, as amended by Act 15, P.A. 1962, is waived?”

It will be noted that section 30a of Act 156 makes a member of the board of county supervisors ineligible to receive “any appointment from or be employed in any capacity whatsoever.” The above-quoted proviso from section 30a is limited to permitting a member to accept “from the board of supervisors any office or appointment wherein there is no salary to be paid for services therefor.”

No provision is made therein for the contingency of the member waiving any compensation payable to him incident to that office. *Moll v. County of Wayne*, (1952) 332 Mich. 274.

It should be borne in mind that this provision deals with one’s eligibility to accept a county office or employment. Frequently, determination of an issue as to whether one is a lawful incumbent of such an office may

well be dependent thereon. Presumably, the legislature in enacting said section in the first instance, as well as the 1941 amendment thereto, was of the opinion that any question with respect thereto should be readily subject to determination and, therefore, should not be dependent upon whether an individual office-holder had waived the compensation to which he would otherwise have been entitled.

For those reasons, both of your questions are answered in the negative.

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*Attorney General.*

700303.1

JUDGES: Change in date of election.

CONSTITUTION: Constitutional amendments required to authorize legislation.

Amendments to the state constitution with respect to the date of election and the length of the term of state judges would be required in order to authorize the adoption of legislation to provide for their election in November of the odd-numbered years.

No. 4693

March 3, 1970.

Hon. Alfred Sheridan  
State Representative  
Capitol Building  
Lansing, Michigan

Your request for opinion advises that you contemplate the introduction of legislation for the purpose of providing for the election in November of the odd-numbered years some or all of the following judges: (1) judges of the recorder's court; (2) probate judges; (3) circuit judges; (4) district court judges. You inquire as to the constitutionality of legislative measures to accomplish those changes.

Of the officers which you cite only two, circuit judges and probate judges, are constitutional officers. The Constitution requires that those officers be elected and that their term of office commence at twelve o'clock noon on the first day of January, next succeeding the date of their election. Art. XI, Sec. 2. The sole provision with respect to the date of their election is the requirement of Article II, Section 5, that all regular elections for state, national, county and township offices shall be held on the first Tuesday after the first Monday of November in each even-numbered year.

Circuit judges are state officers. Probate judges, while elected at least in most areas of the state by counties, are likewise recognized for many purposes to be state officers. Following the effective date of the present constitution, it was held that the judges of the Detroit recorder's court were state rather than city officers, and hence, required by Article II, Section 5, to be elected at the general November election held in the even-numbered years. O.A.G. 1963-64, No. 4225, p. 295. Judges of that court were elected in 1966 for terms of six, eight and ten years. There-