

See *Alan v Wayne County*, 388 Mich 210, 285, 286; 200 NW2d 628 (1972).

The 1974 general election is not one at which a prosecutor would ordinarily be elected. Therefore, if the successor is appointed to fill the vacancy in the office of prosecuting attorney occurring more than 150 days before that election, such appointee will serve only until a successor is elected at the 1974 general election. The elected successor will serve for the remainder of the term to which the prosecutor was elected in 1972.

FRANK J. KELLEY,  
*Attorney General.*

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**RETIREMENT SYSTEMS: Benefits for city firemen and policemen**

The legislative body of a city or its electors with a retirement system for firemen and policemen under 1973 PA 345 may not adopt differential rates of retirement benefits for firemen and policemen.

Opinion No. 4811

February 12, 1974.

Honorable Gary M. Owen  
State Representative  
The Capitol  
Lansing, Michigan

You have requested my opinion on the following question:

May a city with a retirement system for firemen and policemen, established pursuant to 1937 PA 345, provide a retirement pension of 2½% of the average final compensation multiplied by the first 25 years of service for retired firemen, and a retirement pension of 2¼% of the average final compensation multiplied by the first 25 years of service for retired policemen?

1937 PA 345; MCLA 38.551 et seq.; MSA 5.3375(1) et seq., provides for the establishment, maintenance and administration of a system of pensions for the personnel of fire and police departments employed by cities, villages or municipalities having full paid members in such departments. At the outset, it should be noted that the act does not become effective in any city, village or municipality unless it is approved by its electors in accordance with section 11 of the act, *supra*.

Membership in the retirement system established by the city, village or municipality, in accordance with the provisions of 1937 PA 345, *supra*, "shall include all policemen and firemen employed by a city, village or municipality." 1937 PA 345, § 12, *supra*. This section also provides that membership in the retirement system shall not include volunteer firemen, privately employed policemen and firemen, persons temporarily employed during emergencies, and civilian employees of the police and fire departments, except certain policemen or firemen transferred to a civilian position within the police or fire department.

Members of such retirement system are required to make contributions to the system equal to 5% of the salary paid to them by a city, village or municipality, as set forth in 1937 PA 345, § 9, *supra*.

Retirement benefits are payable to members of the retirement system provided they are 55 years of age or older and with 25 or more years of service, based upon a statutory formula of 2% of the average final compensation multiplied by the first 25 years of service credited to the member, plus 1% of the average final compensation multiplied by the number of years, and fraction of a year, of service rendered by him which are in excess of 25 years, as set forth in 1937 PA 345, § 6, *supra*. As amended by the legislature through 1970 PA 230, this section also provides:

“ . . . A city, village or municipality under the provisions of this act, may, upon the approval of the legislative body or the electors thereof increase the percentage of the payment from 2% up to a maximum of 2.5%. Once the increase is approved, it shall not be reduced for members under the system at the time of the increase. The legislative body may also increase the percentage of employee contributions. . . .”

The retirement system is administered by a retirement board composed of 5 members, as set forth in 1937 PA 345, § 1, *supra*. It is a creature of the legislature and its powers have been enumerated by the legislature. See OAG, 1963-1964, No 4155, p 453 (August 31, 1964).

In plain and unambiguous terms the legislature has commanded that members of such retirement system, provided they are 55 years of age or older and with 25 or more years of service, shall receive retirement benefits of not less than 2% of the average final compensation multiplied by the first 25 years of service credited to the member, plus 1% of the average final compensation multiplied by the number of years, and fraction of a year, of service in excess of 25 years. Upon approval by the legislative body of a city, village or municipality or electors thereof under the provisions of 1937 PA 345, § 6, as amended by 1970 PA 230, the statutory formula may be increased to a maximum of 2.5%, and “once the increase is approved, it shall not be reduced for members under the system at the time of the increase.” This clear grant of authority confers no power to adopt two rates of increase, one for firemen and one for policemen. The rate may be increased for members of the system, both firemen and policemen.

It is a well established rule of statutory construction that where powers are specifically conferred they cannot be extended by implication. No other or greater power was given than that which the statute specifies. *Eikhoff v Charter Commission of the City of Detroit*, 176 Mich 535; 142 NW 746 (1913).

Therefore, it is the opinion of the Attorney General that the legislative body or the electors of a city with a retirement system for firemen and policemen, as set forth in 1937 PA 345, *supra*, may increase the percentage of payment of retirement benefits from 2% up to a maximum of 2.5% for its members, both firemen and policemen, but the legislative

body or the electors of a city may not adopt two rates, one for firemen and one for policemen.

FRANK J. KELLEY,  
Attorney General.

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**PLATS:** Subdivision of real property into five or more parcels.

Definition of "subdivide" and "subdivision" in § 104(d) of 1967 PA 288, the Subdivision Control Act, interpreted and discussed in various situations regarding creation of five or more parcels each of ten or fewer acres in area from a single parcel or tract of land within a given ten-year period.

Opinion No. 4804

April 25, 1974.

Honorable Melvin L. Larsen  
State Representative  
The Capitol  
Lansing, Michigan 48901

You have requested my response to six questions regarding the interpretation of the Subdivision Control Act, 1967 PA 288, MCLA 560.101 *et seq.*; MSA 26.430(101) *et seq.* The following hypothetical facts are set forth in your letter:

- "(1) 'X' owns 160 acres of land in a single parcel that is zoned suburban farms which provides for a minimum homesite of two acres.
- "(2) He (then) sells ten parcels of 10.1 acres each to different individuals.
- "(3) (Thereafter) 'X' also sells four parcels of his remaining acreage, each of the four parcels being ten acres or less.
- "(4) Subsequently the owners of each of 10.1 acres referred to in Fact 2 above also break out their respective 10.1 acres into 2.5 acre parcels and sell same.
- "(5) All of the above sales occurred in a single ten-year period immediately after the acquisition of his original 160-acre parcel."

The six questions which you have asked will be stated and answered separately. Pertinent to each question is the following definition of "subdivide" or "subdivision" set forth in sub-section (d) of § 102 of the Act:

" . . . The partitioning or dividing of a parcel or tract of land by the proprietor thereof or by his heirs, executors, administrators, legal representatives, successors or assigns for the purpose of sale, or lease or more than one year, or of building development, where the act of division creates 5 or more parcels of land each of which is 10 acres or less in area; or 5 or more parcels of land each of which is 10 acres or less in area are created by successive divisions within a period of 10 years."