

751024.1

TOWNSHIPS: Appointment of administrative assistants.

OFFICERS: Agreements extending beyond term.

CONSTABLES: Restriction of duties.

Where a public officer contracts for performance of personal or professional services, such a contract may not extend beyond the term of the officer who makes it.

The powers, duties and responsibilities of constables are established by statute and cannot be restricted or limited by township officials.

Opinion No. 4898

October 24, 1975.

Honorable Thomas Guastello
State Senator
The Capitol
Lansing, Michigan 48901

You have sought my opinion concerning employment of certain township personnel. Restated, your questions are:

1. Can a township official elected for two years appoint an administrative assistant for a period of three years?
2. Can a township restrict the duties of an elected constable?

The term of office of township officials, except trustees, is two years. 1954 PA 116, § 362; MCLA 168.362; MSA 6.1362.

The authority of township officials to employ township officials for any period of time is limited. In I OAG, 1955-1956, No 2091, p 325 (June 14, 1955), it was determined that a township has only that power and authority prescribed by law or fairly implied therefrom. That opinion concluded that a township could not create offices which are not authorized by law and therefore the employment of an administrative assistant to the supervisor was illegal unless the duties of that position were those of a position otherwise authorized by statute and merely referred to by a different name.

Applying the same principles, it was decided in II OAG, 1955-1956, No 2459, p 79 (February 15, 1956), that a township could not employ an agricultural agent because there was no statutory authorization to do so.

The township supervisor, in his capacity as assessor of the township, is authorized to employ a clerk to assist him in those duties with the approval of the electors of the township under the provisions of RS 1846, ch 16, § 61; MCLA 41.61; MSA 5.52. The township clerk is authorized to appoint a deputy under the provisions of RS 1846, ch 16, § 69; MCLA 41.69; MSA 5.61. Statutory authorization for the appointment of a deputy to the township treasurer is provided by 1893 PA 206, § 111; MCLA 211.111; MSA 7.165.

The statutes confer upon the incumbent officeholder the authority to appoint a subordinate. When that person leaves office, the successor is in turn vested with the authority under the statute to appoint a subordinate.

If the prior officeholder were to agree to allow his subordinate to continue in his position beyond the termination of the officeholder's term, then he would be in a conflict with the express provisions of these statutes in that he would be restricting the statutory authority of the successor. Therefore, any agreement extending beyond the two-year term of the officeholder would be ultra vires. 67 CJS "Officers" § 102c, p 370.

In view of the foregoing, your first question is answered in the negative. Administrative assistants, to the extent authorized by statute, may not be appointed for a period which would exceed the term of the officer making the appointment.

Turning to your second question, the office of township constable is created by statute, 1954 PA 116, § 358, as amended; MCLA 168.358; MSA 6.1358, which reads in relevant part as follows:

"In every township there shall be a general November election in each even numbered year at which there shall be elected by ballot the following township officers: A supervisor, a clerk, a treasurer, 2 trustees, and at least 1 but not to exceed 4 constables. The order of offices on the township portion of the ballots shall be the same as the officers are here listed.

"The number of constables to be elected shall be determined by the township board at least 6 months prior to the township election. If no determination as to the number of constables to be elected is made by the township board, 2 constables shall be elected."

In a letter opinion to Marquette County Prosecutor Dale Ruohomaki dated June 6, 1973, the question of a township's authority to restrict and eliminate the position of constable was discussed. That opinion pointed out the above statutory language and stated:

"Furthermore, there is no authority, either in the state constitution, statutes, or pursuant to the common law, which authorizes a township board to abolish the office of township constable."

The duties of a constable are established in part by statute, RS 1846, ch 16, § 82; MCLA 41.82; MSA 5.74, which provides:

"Constables shall serve all warrants, notices and process lawfully directed to them by the township board, or the township clerk, or any other officer, and shall perform such other duties as are required of them by law."

In addition, it has been determined that constables may arrest for a misdemeanor committed in their presence. OAG, 1952-1954, No 1563, p 33 (September 3, 1952); OAG, 1957-1958, No 3293, p 217 (August 13, 1958).

These responsibilities were not created by township authorities and they cannot be restricted by them. The constable must be permitted to discharge those duties and any others assigned to the position by law. Any additional functions performed by the constable at the direction of the township officials which are not provided for by law but which may have come to be associated with the position through established practice can, however, be

eliminated. Nevertheless, in answer to your second question, a township may not restrict the duties of the elected constable which have been established by law.

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Attorney General.

751028.2

CONSTITUTIONAL LAW: Search and seizure.

CORRECTIONAL INSTITUTIONS: Search of resident's room in correctional center.

Prison authorities may search and seize the person, papers, or effects of a prison inmate without warrant since, in view of the need to maintain security and discipline, such conduct is not unreasonable. Despite the fact that a resident at a corrections center enjoys greater liberty than a prisoner incarcerated in a cell-block, he remains in the custody of the Department of Corrections subject to its supervision, surveillance and control. Therefore, correctional agents may subject him, his living quarters, and his personal effects to inspection and search.

Opinion No. 4892

October 28, 1975.

Mr. Perry M. Johnson, Director
Department of Corrections
Stevens T. Mason Building
Lansing, Michigan 48913

You have asked my opinion on the following questions:

1. When the Corrections Commission designates the location of a corrections center as a correctional facility does such a designation by the Corrections Commission make a resident's room in a corrections center equivalent to a prison cell?
2. Can it be searched for:
 - A. Contraband to be used in evidence of violation of center rules in an administrative hearing?
 - B. Evidence of criminal activity to be used in court?
3. Obviously, center workers must routinely inspect the rooms of residents. Does the observation of suspected evidence under such circumstances provide ground for a search warrant if reported to police?
4. What is the situation if the agent were to effect the arrest of the center resident in his room? Is he then entitled to search that room for any evidence necessary to sustain center violation or an action in a criminal court?

You state that utilization of hotels and other places of public accommodation as corrections centers creates many situations in which the resident is accused of wrongdoing and, with respect to which, a search of his room could either clear or implicate him.