

1975 PA 254 are therefore valid for the reason that the said provisions are capable of being carried out without reference to 1975 PA 254, § 26. *Rohan v Detroit Racing Association, supra.*

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**COUNTIES: Agent for title insurance company**

A county may not act as an agent for a title insurance company where title insurance is available from a proprietary company in the area.

Opinion No. 4909

January 8, 1976.

Mr. David A. Dimmers  
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You have inquired as to whether a county may sell title insurance as an agent for a title insurance company in competition with an existing proprietary company in the same area.

In *Toebe v City of Munising*, 282 Mich 1, 15-16; 275 NW 744 (1937), the Michigan Supreme Court outlined the powers which a municipal corporation may properly exercise:

“It is a general and undisputed proposition of law that a *municipal corporation possesses and can exercise the following powers, and no others*: First, those granted in *express words*; second, those *necessarily or fairly implied* in or *incident* to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation,—not simply convenient, but indispensable. Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied.” 1 Dillon, *Municipal Corporations* (5th Ed.), § 237.”  
[Emphasis that of the court]

In *Toebe, supra*, the Court held that a city may not engage in the business of selling coal to the public in direct competition with an existing coal company. Although recognizing that an exception may be made where an emergency exists, the Court concluded:

“In the case at bar plaintiff desires to engage in a legitimate private business and has a right to be free from the unauthorized proprietary business activity of the municipality.” [p 17]

Relying on the *Toebe* decision, a similar conclusion was reached concerning the authority of a county road commission to deal in crushed rock in OAG, 1945-1946, No 0-4329, p 594 (January 25, 1956), and concerning the authority of a city to deal in blacktop material in I OAG, 1957, No 3134, p 511 (November 20, 1957).

In cases in which a Court has permitted a governmental unit to engage in a business activity, it has required that the business activity be closely related to a governmental function expressly authorized by constitution, statute or charter so that it clearly falls within the second and third class of powers enumerated in the *Toebe* decision. Thus, in *Andrews v City of South Haven*, 187 Mich 294; 153 NW 827 (1915), the city was permitted to sell and install electrical fixtures and appliances in direct competition with a local business because the activity was “. . . naturally incidental to and an implied power connected with the business of operating an electric light plant. . . .” [p 303] The city was authorized by both constitution and statute to operate a public utility to supply light to its inhabitants.

Applying the reasoning in *Andrews*, the Court in *Thomas v Board of Supervisors of Wayne County*, 214 Mich 72; 182 NW 417 (1921), allowed the county to establish and maintain a tract index system and to make and furnish to the public for a fee abstracts of title. The Court held that the furnishing of abstracts is an essential extension of a statutorily authorized activity.

Currently, certain counties<sup>1</sup> are authorized to establish and maintain a system of abstracts. Service by the county as an agent of a private title insurance company is not within the purposes set forth in the act so as to come within the powers of the county, either incidental or essential to the operation of the abstract system.

It is therefore my opinion that a county may not act as an agent for a title insurance company where such insurance is available from a proprietary company in the area.

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*Attorney General.*

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<sup>1</sup> Those which have a population of 900,000 or more and those which on August 18, 1921 maintained abstract books, and those which have approved the establishment of an abstract office by elector petition and referendum. 1921 PA 378, § 11; MCLA 53.151; MSA 5.1011.