

“ . . . own, establish, maintain and regulate public hospitals and to purchase and provide for any and all things which may be deemed advisable or necessary thereto. . . .” 1940 Ala Code. T 37, § 469.

The Court said that, based on this statute, a municipality could only use municipal funds to construct buildings which bear a reasonable relationship to a hospital. The Court found that a building for use for office space did not have such reasonable relationship.

In another situation, the Georgia Court found in *Petty v Hospital Authority of Douglas County*, 233 GA 109; 210 SE2d 317 (1974), that it was a public purpose for a hospital authority to erect a “medical office building” since the statute specifically authorized “office buildings” and because the office building would attract doctors to the community and contribute to full utilization of the medical facilities.

Therefore, in summary, it is my opinion that a county is prohibited from financing a building with tax supported bonds for use in part by doctors for office space in their private practice, such use not having been declared by the legislature to be for a public purpose.

FRANK J. KELLEY,
Attorney General.

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COUNTIES: Authority of board of commissioners to freeze capital outlay budget.

BUDGET: Authority of board of commissioners to freeze capital outlay budget.

A newly elected board of county commissioners may freeze capital outlay that had been budgeted by its predecessor board.

Opinion No. 4929

February 6, 1976.

Honorable Edward E. Mahalak
State Representative
The Capitol
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You have requested an opinion concerning the authority of a newly constituted board of county commissioners to override a decision of the previous board to expend funds for capital improvement. You have stated your question as follows:

“Can a newly elected Board of County Commissioners legally freeze all capital outlay that has already been budgeted for various departments in county government?”

The authority of a subsequent board of county commissioners to alter budgetary provisions set by a former board was discussed by the Michigan Supreme Court in *Atlas v Wayne County Board of Auditors*, 281 Mich 596; 275 NW 507 (1937). In that case, the annual salary for assistant

prosecuting attorneys had been reduced by the budget adopted by the board of supervisors for the year 1934-1935 from the level previously set. An assistant prosecuting attorney brought an action seeking to compel payment of the higher salary contending that his salary could not be reduced in this manner. The Supreme Court rejected this contention with the following observation:

"The presumption is against making a statute irrepealable. [Citations omitted]. The act of one legislative body does not tie the hands of future legislatures. [Citation omitted]. The power to amend and repeal legislation as well as to enact it is vested in the legislature, and the legislature cannot restrict or limit its right to exercise the power of legislation by prescribing modes of procedure for the repeal or amendment of statutes; nor may one legislature restrict or limit the power of its successors. [Citation omitted]. One legislature cannot enact irrepealable legislation or limit or restrict its own power, or the power of its successors, as to the repeal of statutes; and an act of one legislature is not binding on, and does not tie the hands of, future legislatures. [Citation omitted].

"From the very nature of the powers conferred upon the board of supervisors by the Constitution and laws of the State, the board of supervisors of Wayne county of 1931 was without power or authority by ordinance or otherwise to limit in any way the power of subsequent boards of supervisors to exercise their constitutional or legislative power to fix salaries. . . ." (281 Mich at 599)

This case was cited and relied upon in two formal opinions of the Attorney General. In OAG, 1951-1952, p 156, 157, No 1348 (January 10, 1951), the following basic rule was recognized:

"It is a fundamental and axiomatic rule that one legislative body may not preclude the right of its successor body to exercise its own judgment and discretion on matters relative to governmental functioning. Public policy demands that legislative bodies may not so exercise their present powers beyond the term of their office in such a manner that the hands of their successors are tied."

Again in I OAG, 1957, p 422, 423, No 3119 (September 9, 1957), it was noted that:

"Normally action taken by a legislative body regardless of the form thereof is subject to subsequent rescission. . . ." [footnote omitted]

These principles coincide with the intent of the legislature to permit subsequent alterations in a county budget. 1963 2nd Ex Sess PA 43, § 4; MCLA 141.414; MSA 5.3328(4), provides:

"Changes made in its budget by the governing body of a local unit subsequent to such public hearing shall not affect the validity of such budget."

In the absence of a statutory or charter provision to the contrary, an appropriations ordinance may be changed after the beginning of a fiscal year. "An appropriation, when not associated with a contract as part of

its obligation, is revokable at will. Moreover, it has been held that ordinances appropriating money may be amended." 15 McQuillin, Municipal Corporations, § 39.66, p 189.

It is my opinion, in view of the foregoing, that a newly elected board of county commissioners may freeze capital outlay that had been budgeted for various departments of county government by its predecessor board.

FRANK J. KELLEY,
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FIREARMS: Applicability of Michigan statutes regulating firearms to "Taser Public Defender" device.

The "Taser Public Defender" is a "firearm" as defined in MCLA 8.3t; MSA 2.212(20) and comes under the provisions of specific Michigan statutes.

Opinion No. 4950

February 13, 1976.

Colonel George L. Halverson
Director, Michigan State Police
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I am writing in response to your request for my opinion regarding the relevant laws and regulations applicable to the Taser Public Defender. At my request Mr. John Cover, the inventor and the president of the firm which manufactures the Taser, sent me technical data which describes its operation.

Whether this device comes under the statutes which control the sale and use of pistols and firearms depends on whether it is a "firearm" as defined in MCLA 8.3t; MSA 2.212 (20). This section states:

"The word firearm except as otherwise specifically defined in the statutes, shall be construed to include *any weapon from which a dangerous projectile may be propelled by using explosives, gas or air as a means of propulsion, . . .*" (emphasis added)

The rule of construction applicable to the foregoing section is set forth in MCLA 8.3; MSA 2.212 which states:

"In the construction of the statutes of this state, the rules stated in section 3a to 3w shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature."

A "weapon" has been defined as:

"An instrument of offensive or defensive combat or anything used, or designed to be used in destroying, defeating, or injuring an enemy."
Black's Law Dictionary, 4th ed, 1968 (p 1764)

The nature of this device is such that it may be used in an offensive or