

The powers and duties of townships are granted by law. MCLA 41.2; MSA 5.2, provides in pertinent part:

"Sec. 2. The inhabitants of each organized township shall be a body corporate, and as such, may sue and be sued, and may appoint all necessary agents and attorneys in that behalf; and shall have power to purchase and hold real and personal estate for the public use of the inhabitants . . ." (Emphasis Supplied)

It has been held that townships may purchase land for park and recreational use and may exercise the same proprietary rights as an individual. *Attorney General ex rel Bissell v Burrell*, 31 Mich 25, (1875). It has also been held that a township acting in its proprietary capacity is subject to the same rules that govern private corporations or individuals. *Dohm v Acme Township*, 354 Mich 447; 93 NW2d 323 (1958). I, therefore, conclude that if Van Buren Township is the owner of the bed of Belleville Lake, it may exercise the rights of a riparian owner and prohibit hunting by the public on Belleville Lake.

FRANK J. KELLEY,  
Attorney General.

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STATE: Commercial Advertisement in State Publications

ADVERTISEMENTS: State Publications

STATUTES: Authorizing Advertising in State Publications

The legislature may enact a statute permitting the sale of advertising on items or publications produced by state agencies.

Opinion No. 5016

May 11, 1976.

Honorable Robert D. Young  
State Senator  
The Capitol  
Lansing, Michigan 48901

You have submitted for my consideration a copy of proposed legislation designed to authorize the sale of advertising on State items and publications which are made available for public distribution. Your proposed bill reads as follows:

"A bill to permit the sale of advertising on items or publications produced by state agencies.

"THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

"Sec. 1. If a state agency engages in the sale of an item or publication to members of the public, that agency may, if approved by the director of that agency sell advertising space on that item or publication.

"Sec. 2. An advertisement authorized by this act shall be accompanied by a disclaimer statement to the effect that the state agency and the state of Michigan do not indorse, warrant, or guarantee the product or service advertised.

"Sec. 3. Contracts for the sale of advertising space, as authorized by this act, shall be awarded on the basis of competitive bids."

You ask whether this legislation would be constitutional if enacted into law. For reasons which will be discussed, it is my opinion that this legislation suffers from no constitutional infirmity.

There is no constitutional provision prohibiting the sale of advertising. The applicable legal principle was concisely stated in *Thomas v Board of Supervisors of Wayne County*, 214 Mich 72, 83; 182 NW 417 (1921), as follows:

" . . . When action is taken by a State or one of its municipal subdivisions, manifestly in the interest of its people as a whole, and the rights of individuals are not abridged thereby, and such action is not within the inhibition of some constitutional or statutory provision, it should be upheld as a valid exercise of authority, though lacking in any positive grant of power to support it. . . ."

This statement of the law has been frequently quoted and applied. See, for example, *City of Detroit v Safety Investment Corp*, 288 Mich 511, 515; 285 NW 42 (1939); *Bowler v Nagel*, 228 Mich 434, 440; 200 NW 258 (1924); OAG, 1943-1944, No 0-2297, p 762, 764 (May 23, 1944).

As a fundamental principle underlying state government generally throughout this country, it is recognized that a state legislature has plenary power, and that a state's constitution is a limitation on legislative power, not a grant of that power. As a result, a state legislature may properly exercise all legislative power not forbidden by the state constitution or delegated through or prohibited by the federal constitution. See for example *Cutts v Dept of Public Welfare*, 1 Wis 2d 408; 84 NW2d 102, 106 (1957); *Trade Commission v Skaggs Drug Centers, Inc*, 21 Utah 2d 431; 446 P2d 958, 962 (1968); *In re Elliott*, 74 Wash 2d 600; 446 P2d 347, 351 (1968); *Opinion of the Justices*, 276 A2d 441, 444 (Maine, 1971); *State v Sims*, 140 WV 64; 82 SE2d 321, 327 (1954); *State v State Commission of Revenue & Taxation*, 163 Kan 240; 181 P2d 532, 538, 539 (1947); *Russell v McKeithen*, 257 La 225; 242 S2d 229, 235, 236 (1970); 115 ALR 1456, Anno: Constitutionality of statute authorizing state to loan money and engage in business of a private nature.

In OAG, 1941-1942, No 19212, p 88 (March 11, 1941), it was held that advertising the attractions of Michigan is a valid public function which does not violate any constitutional restriction. In this case, advertising on state publications and other items would generate revenue and would, consequently, also serve a public purpose.

It is a valid governmental function for a governmental agency to provide information to the public in the form of periodicals or special publications. When this is done there is no reason why, incidental to the publication of the document, the state may not also accept commercial advertisements.

FRANK J. KELLEY,  
Attorney General.