

common-law rule and the usual interpretation thereof which forbids the use of any more force than necessary to effect the arrest, recognizes the arrestor's reasonable, though mistaken, belief of necessity, as distinguished from actual necessity. (E.g., *State v. Rose*, 142 Mo. 418, 44 S.W. 329 (1898). See Perkins, "The Law of Arrest," 25 Iowa L.Rev. 201 at 266, 276 (1940).)

The officer's right to use deadly force is, of course, much more limited. Two different situations must be considered: first, that in which the offender's forcible resistance threatens the officer with death or great bodily harm, thus raising the issue of self-defense; second, that in which the resistance takes the form of flight or other action which does not threaten the safety of the officer, but the circumstances are such that the safety of other persons is endangered if the offender is not immediately arrested. As to the first, the ordinary law of self-defense applies, whether the officer would or would not be justified in using deadly force to make the arrest. (See Pearson, "The Right to Kill in Making Arrests," 28 Mich.L.Rev. 957 (1930); Waite, "Some Inadequacies in the Law of Arrest," 29 Mich.L.Rev. 448

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**TOWNSHIPS:** Financing of police protection.

**POLICE:** Financing of township police protection.

**MUNICIPAL FUNDS:** Borrowing in an anticipation of receipt of revenue sharing funds.

A township board may maintain and operate its police department by:

1. purchasing police motor vehicles, apparatus, equipment and housing with available funds not to exceed 10 mills in any 1 year;
2. appropriating, without millage limitations, amounts necessary for maintenance and operation; and/or
3. levying a special assessment and appropriating general funds, above those raised by special assessment.

Where a determination has been made that there has been a population increase in a municipality, it may borrow in anticipation of receipt of state revenue sharing funds up to a maximum of 50% of the total payments received in the last preceding fiscal year.

Opinion No. 5106

September 7, 1976.

Honorable John T. Bowman  
State Senator  
The Capitol  
Lansing, Michigan

You have asked for my opinion on matters relating to township finance. Essentially, your first question is: What is the limit on moneys that may be raised by a township for the support of the township police department?

1951 PA 181, § 1; MCLA 4.1851; MSA 5.2640(31), prior to enactment of 1974 PA 129, provided for a limitation of two and one-half mills on annual township appropriations for maintenance or operation of a police department. Similarly, 1951 PA 181, *supra*, § 2; MCLA 41.852; MSA

5.2640(32), prior to enactment of 1974 PA 129, provided for a limitation of two and one-half mills on the amount that could be appropriated annually over and above that raised by special assessments for the maintenance and operation of police protection.

However, 1974 PA 129, *supra*, removed the two and one-half mill limitation on annual appropriations for police department maintenance and operation and the two and one-half mill limitation of that could be appropriated annually above that raised by special assessment.

As a result of enactment of 1974 PA 129, *supra*, a township board may take the following action regarding police departments:

1. purchase police motor vehicles, apparatus, equipment, and housing with available general or contingent funds not to exceed 10 mills in any 1 year;
2. appropriate without limit from available general or contingent funds amounts necessary for maintenance and operation of a police department;
3. defray all or part of the cost of police equipment and operation by special assesment on all of the township lands and premises; and/or
4. appropriated out of available township general funds without limit over and above that raised by special assessment the sum necessary for the maintenance and operation of the police unit.

Your second question asks whether anticipated increased revenues to be received by a township as a result of a determination of a population increase [determined pursuant to the special census provisions of 1971 PA 140, MCLA 141.907; MSA 5.3194(407)], will be so "remotely contingent as to preclude immediate borrowing against it."

Section 1a was added to Chapter IV of the Municipal Finance Act, 1943 PA 202, MCLA 134.1a; MSA 5.3188(13a), by 1975 PA 25. This section provides:

"A municipality may, by resolution of its governing body, and without a vote of the electors, borrow money and issue its notes in anticipation of the receipt of payments under the provisions of Act No. 140 of the Public Acts of 1971, as amended, being sections 141.901 to 141.919 of the Michigan Compiled Laws, for its then next succeeding fiscal year or the payments for the current fiscal year. *The amount so borrowed shall be limited to 50% of the total payments received in the last preceding fiscal year.*" [Emphasis added]

In light of the referenced authorizing statute which permits borrowing in anticipation of the receipt of revenues to which you have made reference, it does not appear that the revenues would be "so remotely contingent" as to prevent borrowing, but it does appear that no borrowing in anticipation of such additional revenues could be undertaken until such time as it is possible to determine by historical experience the dollar amount of "50% of the total payments received in the last preceding fiscal year."

We would further note that 1971 PA 140, § 7, *supra*, provides in part:

"(2) The results of the special census as certified in subsection (1) shall be utilized for the purpose of making distributions under section 14a starting on the July 1 next following the date of certification of the results. \* \* \*" [Emphasis added] MCLA 141.907; MSA 5.3194(407)

This additional limitation means that the previously referenced fiscal year of experience would have to be completed subsequent to such July 1 next following the date of certification of the results of the special census.

I therefore conclude that a special census undertaken by a township pursuant to 1971 PA 140, § 7, *supra*, could only be utilized for making distributions of money to the township under 1971 PA 140, § 14a, MCLA 141.914a; MSA 5.3194(414a), starting on the July 1 next following the date of certification of the census. Further, borrowing in anticipation of the receipt of such revenues is limited to 50% of the total payments received by the township in the last preceding year.

FRANK J. KELLEY,  
*Attorney General.*

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**TOWNSHIPS: Adoption of consumer protection ordinance.**

To protect consumers in the township, a charter township may adopt an ordinance establishing a consumer protection agency to license and regulate business.

Opinion No. 5102

September 9, 1976.

Honorable William Faust  
State Senator  
The Capitol  
Lansing, Michigan 48901

You have asked for my opinion regarding the legality of a proposed consumer protection ordinance for Canton Township, a copy of which was furnished with your letter.

The ordinance proposes to establish a consumer protection agency authorized to license and regulate virtually every business in the township.

Const 1963, art 7, § 17 provides:

"Each organized township shall be a body corporate with powers and immunities provided by law."

1947 PA 359, MCLA 42.1 *et seq*; MSA 5.46(1) *et seq*, prescribes the powers and functions delegated to charter townships\* by the legislature.

1947 PA 359, *supra*, § 15, provides:

"The township board of any charter township may enact such ordinances as may be deemed necessary to provide for the public peace and health and for the safety of persons and property therein, and may by

\* Canton Township became a charter township in 1961.