

tive officers] of the city shall be appointed by the City Manager for an indefinite period." Thus, the City Manager is the appointing officer for the purpose of Act 78.

FRANK J. KELLEY,
Attorney General.

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SUMMER RESORT ASSOCIATIONS: Zoning.

SUMMER RESORT ASSOCIATIONS: Voting by proxy.

TOWNSHIPS: Zoning powers.

COUNTIES: Zoning powers.

ZONING AND PLANNING: Powers of counties and townships over summer resort associations.

A township may not exercise zoning powers over territory incorporated by a summer resort association.

A county may exercise zoning powers over territory incorporated by a summer resort association.

Members of a summer resort association may vote by proxy for membership on the board of trustees, for the adoption or amendment of by-laws, for establishment of dues and assessments and for authorization to sell or dispose of lands of the association.

Opinion No. 5065

December 17, 1976.

Honorable Edgar A. Geerlings
State Representative, 97th District
1280 Edinborough Drive
Muskegon, Michigan 49441

Citing 1929 PA 137, MCLA 455.201 *et seq*; MSA 21.751 *et seq*, the summer resort owners act, you have requested my opinion upon the following restated questions:

1. May a township exercise zoning powers over a corporation duly organized under 1929 PA 137?
2. May proxies be utilized for purposes of voting upon such issues as adopting or amending bylaws, establishing dues, or granting authority to sell, mortgage, give, grant, convey or lease lands owned by the corporation?
3. If the answer to question #2 is no, is voting by absentee ballot on such issues authorized at the annual or a special meeting of said corporation?

1929 PA 137, *supra*, § 1 authorizes summer resort owners to form a

body politic and corporate. Regarding the nature of the corporation, and its powers, 1929 PA 137, *supra*, § 4 provides in pertinent part:

“On compliance with the foregoing provisions of this act, the persons so associating, their successors and assigns, shall become and be a body politic and corporate, under the name assumed in their articles of association and shall have and possess all the general powers and privileges and be subject to all the liabilities of a municipal corporation and become the local governing body. . . .”

Specific powers of the corporation's board of trustees and its jurisdiction over corporation lands and the lands of individuals situated within the corporation's boundaries are enumerated in 1929 PA 137, *supra*, § 12; it provides:

“The board of trustees shall have the authority to enact by-laws, subject to repeal or modification by the members at any regular or special meeting, calculated and designed to carry into effect the following jurisdiction over the lands owned by the corporation and its members, viz.: To keep all such lands in good sanitary condition; to preserve the purity of the water of all streams, springs, bays or lakes within or bordering upon said lands; to protect all occupants from contagious diseases and to remove from said lands any and all persons afflicted with contagious diseases; to prevent and prohibit all forms of vice and immorality; to prevent and prohibit all disorderly assemblies, disorderly conduct, games of chance, gaming and disorderly houses; to regulate billiard and pool rooms, bowling alleys, dance halls and bath houses; to prohibit and abate all nuisances; to regulate meat markets, butcher shops and such other places of business as may become offensive to the health and comfort of the members and occupants of such lands; to regulate the speed of vehicles over its streets and alleys and make general traffic regulations thereon; to prevent the roaming at large of any dog or any other animal; to compel persons occupying any part of said lands to keep the same in good sanitary condition and the abutting streets and highways and sidewalks free from dirt and obstruction and in good repair.”

Neither the quoted section nor the remaining sections of 1929 PA 137, *supra*, grant to a corporation formed under the act, any power to zone lands within the corporation's boundaries. No municipal or quasi-municipal corporation possesses any inherent power to zone. *Clements v McCabe*, 210 Mich 207; 177 NW 722 (1920)

The power to zone lands has only been granted to cities and villages (1921 PA 207, MCLA 125.581 *et seq*; MSA 5.2931 *et seq*); townships (1943 PA 184, MCLA 125.271 *et seq*; MSA 5.2963(1) *et seq*; the Township Rural Zoning Act); and counties (1943 PA 183, MCLA 125.201 *et seq*; MSA 5.2961(1) *et seq*, the County Rural Zoning Enabling Act).

The Township Rural Zoning Act, 1943 PA 184, *supra*, is entitled:

“AN ACT to provide for the establishment in the *unincorporated portions* [emphasis supplied] of organized townships of zoning districts. . . .”

1943 PA 184, *supra*, § 1, provides in pertinent part:

“The township board of any organized township in the state of Michigan may provide by ordinance for the establishment of zoning districts in the *unincorporated portions* of such township. . . .” [Emphasis supplied]

Insofar as summer resort associations are incorporated areas of a township, possessing many of the attributes of incorporated general law villages¹ and the Township Rural Zoning Act applies only in unincorporated portions of the township, it is my opinion that a township may not exercise zoning powers over the territory incorporated by the summer resort association.²

On the other hand, the county board of commissioners does possess the power to zone lands within the corporate boundaries of a summer resort association. The County Rural Zoning Enabling Act, 1943 PA 183, MCLA 125.201 *et seq*; MSA 5.2961(1), *et seq*, is entitled:

“AN ACT to provide for the establishment in portions of counties lying *outside the limits of incorporated cities and villages* of zoning districts. . . .” [Emphasis supplied]

1943 PA 183, *supra*, § 1, provides in pertinent part:

“The county board of [commissioners] of any county in the state of Michigan may provide by ordinance for the establishment of zoning districts in the portions of such county *outside the limits of incorporated cities and villages*. . . .” [Emphasis supplied]

Since a summer resort association is neither a city nor village, it is my opinion that the county board may exercise zoning powers within and over lands of a summer resort association and its members lying in any township within the county.

It should be noted that an effective and commonly employed method for protecting the physical quality of a residential area is the use of reciprocal negative easements, commonly referred to as restrictive covenants. Such covenants are enforceable regardless of the existence of a zoning ordinance. The essential elements for establishment of reciprocal negatives are: a common grantor, a general plan and restrictive covenants running with the land. *Cook v Bandeen*, 356 Mich 328; 96 NW2d (1959). Thus, the fact that a zoning ordinance may not be in effect in a community does not mean that the residents may not be fully protected by the existence of covenants.

Responding to your second question, while 1929 PA 137, *supra*, § 8 authorizes the membership of summer resort corporations to vote for the board of trustees by proxy, the act is silent regarding voting by proxy on other matters. 1929 PA 137, *supra*, § 12 authorizes the board of trustees to enact by-laws subject to repeal or modification by the members at a regular or special meeting. 1929 PA 137, § 1, *supra*, authorizes the corpo-

¹ Compare 1929 PA 137, *supra*, § 12 with 1895 PA 3, ch VII, § 1, MCLA 67.1; MSA 5.1285 (general law villages).

² In *Jones v Spring Lake Township*, Circuit Court for the County of Ottawa, No. 75-3498CE, the court held a summer resort association is an incorporated portion of a township and, therefore, the township has no authority to impose zoning restrictions.

ration to assess annual dues and special assessments by a majority vote of the membership. 1929 PA 137, *supra*, § 5 authorizes the board of trustees to sell, mortgage, give, grant, convey and lease corporate lands when authorized by a majority vote of the members of the corporation voting thereon at an annual meeting or a special meeting called expressly for that purpose, by a general by-law adopted and recorded. No provision appears in any of these sections for voting by proxy, nor do they recite that voting shall be by a majority of members present.

The Business Corporation Act, 1972 PA 284, § 123; MCLA 450.1123; MSA 21.200(123), is expressly made applicable to summer resort associations; it provides in pertinent part:

“Unless otherwise provided in, or inconsistent with, the act under which such corporation is or has been formed, this act applied to . . . , summer resort association, . . .”

1972 PA 284, *supra*, § 421 provides for voting by proxy without limitation. See also 1972 PA 284, *supra*, § 611 regarding amendment of the articles of incorporation and 1972 PA 284, *supra*, § 753 regarding the transfer and disposition of corporate property, neither of which require that voting be by the members present. Therefore, it is my opinion that the membership of a summer resort corporation may vote by proxy for the adoption or amendment of by-laws, for the establishment of dues or assessments, and for the granting to the board of trustees of authority to sell or dispose of the lands owned by the association. There is no necessity to respond to your third question in view of the answer to question 2.

FRANK J. KELLEY,
Attorney General.

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CONSTITUTION OF MICHIGAN: Article 11, § 5.

CIVIL SERVICE: Personal services performed by independent contractors.

The Department of Management and Budget may not, without prior approval from the Civil Service Commission, contract with an independent contractor to provide janitorial services to the state.

Opinion No. 5122

December 20, 1976.

Mr. Richard Ross
State Personnel Director
Department of Civil Service
Lewis Cass Building
Lansing, Michigan 48913

In recent years the Department of Management and Budget, and its predecessor, the Department of Administration, have entered into contractual agreements with various companies for the performance of janitorial services within certain State buildings.