

education of any school district may use money in its general fund to provide hospital and surgical benefits for employees and dependents, and health and accident type coverage for school employees only on a joint participating or nonparticipating basis. Thus, the board of education of a school district may use moneys in the general fund to pay the full premium for the above described insurance coverage for school employees.

Therefore, it is my opinion that the board of education of a school district in its discretion is authorized to pay the full premium to purchase hospitalization and surgical insurance for school employees and their dependents, and health and accident coverage for school employees only, pursuant to Sec. 617 of the School Code of 1955, as amended by Act 96, P.A. 1963.

FRANK J. KELLEY,  
*Attorney General.*

63003.1

**CIVIL RIGHTS COMMISSION:** Power to declare and secure enjoyment of Civil Rights in field of housing.

**MUNICIPALITIES:** Power to declare and secure enjoyment of Civil Rights in field of housing.

If either the "Open Occupancy Ordinance" or "Property Owners' Rights Ordinance" of the City of Detroit is adopted, it will be superseded by the Constitution on January 1, 1964, the effective date of the Revised Constitution.

No. 4195

October 3, 1963.

Honorable Michael J. O'Brien  
State Representative  
1010 City-County Building  
Detroit 26, Michigan

You have requested the opinion of this office in regard to the following questions:

1. Does Section 29 of Article V of the new Constitution pre-empt the field of civil rights to the extent that any unit of government may not pass legislation of this type at a local level, specifically referring to the proposed ordinances in the City of Detroit known respectively as the "Open Occupancy Ordinance" and the "Property Owners' Rights Ordinance."
2. Whether or not the proposal known as the "Property Owners' Rights Ordinance" submitted by initiatory petition is unconstitutional and whether it may be placed on ballot.

Taking the second question first, this office is advised that this very question is being considered by the Circuit Court for the County of Wayne in a pending suit. It would, therefore, be inappropriate and unnecessary for this office to render its opinion inasmuch as a court determination is forthcoming.

Consideration will now be given to your first question.

Because the Revised Constitution, approved by the people on April 1, 1963, will not become effective until January 1, 1964, the provisions contained in Article V, Section 29 will not be the supreme law of the State of Michigan until that date. Should the ordinances referred to as the "Open Occupancy Ordinance" and the "Property Owners' Rights Ordinance" be adopted by the City of Detroit, the provisions of the Revised Constitution will not have any impact upon them until January 1, 1964.

The Civil Rights Commission is created by Article V, Section 29 of the Revised Constitution, which reads as follows:

"There is hereby established a civil rights commission which shall consist of eight persons, not more than four of whom shall be members of the same political party, who shall be appointed by the governor, by and with the advice and consent of the senate, for four-year terms not more than two of which shall expire in the same year. *It shall be the duty of the commission in a manner which may be prescribed by law to investigate alleged discrimination against any person because of religion, race, color or national origin in the enjoyment of the civil rights guaranteed by law and by this constitution, and to secure the equal protection of such civil rights without such discrimination.* The legislature shall provide an annual appropriation for the effective operation of the commission.

*"The commission shall have power, in accordance with the provisions of this constitution and of general laws governing administrative agencies, to promulgate rules and regulations for its own procedures, to hold hearings, administer oaths, through court authorization to require the attendance of witnesses and the submission of records, to take testimony, and to issue appropriate orders.* The commission shall have other powers provided by law to carry out its purposes. Nothing contained in this section shall be construed to diminish the right of any party to direct and immediate legal or equitable remedies in the courts of this state.

"Appeals from final orders of the commission, including cease and desist orders and refusals to issue complaints, shall be tried de novo before the circuit court having jurisdiction provided by law."  
(Emphasis supplied.)

The scope of the Commission's powers in regard to civil rights has been previously considered.

From a plain reading of Article V, Section 29, it is clear that the people have conferred *plenary* power upon the Civil Rights Commission in *its sphere of authority* as a constitutional commission to investigate and to secure the enjoyment of civil rights without discrimination.

"\* \* \*"

"The intent of the framers is therefore clear that the Civil Rights Commission has *plenary* power to investigate and secure equal opportunity in the field of housing." (Emphasis supplied.)

O.A.G. 1963, No. 4161, July 22, 1963. See also *Plec v. Liquor Control Commission*, 322 Mich. 691.

Article V, Section 29 is not the only provision of the Constitution which will have an effect on any proposed ordinance adopted by the City of Detroit in the field of civil rights. Consideration must also be given to Article I, Section 2 of the Revised Constitution, which provides as follows:

"No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin. The legislature shall implement this section by appropriate legislation."

I have ruled in my Opinion No. 4161, dated July 22, 1963, *supra*, that equal opportunity to housing, both public and private, is a civil right protected by the Revised Constitution and that the investigation of alleged discrimination of this civil right has been vested by the people in the Civil Rights Commission under Article V, Section 29 of the Revised Constitution.

All of the foregoing is a clear expression of the public policy of this State.

In *Attorney General, ex rel. Lenane, v. City of Detroit*, 225 Mich. 631, the Court considered a minimum wage ordinance of the City of Detroit. *There was no State statute on the subject.* But the Court held that the State had the power to regulate in this area. The Court said:

"The police power rests in the State. \* \* \* [No provision] of the home-rule act delegates to municipalities the general exercise of all of such police power. Nor do the constitutional provisions above quoted work such result. While the municipality in the performance of certain of its functions acts as agent of the State *it may not as such agent fix for the State its public policy* \* \* \* (Emphasis supplied.) At p. 638.

"In the provisions under consideration the city has undertaken to exercise the police power \* \* \* over matters of State concern; it has undertaken not only to fix a public policy for its activities which are purely local but also for its activities as an arm of the State. \* \* \* If \* \* \* the city possesses such of the police power of the State as may be necessary to permit it to legislate upon matters of municipal concern, *it does not follow that it possesses all of the police power of the sovereign so as to enable it to legislate generally in fixing a public policy in matters of State concern.* This power has not been given it either by the Constitution or the home-rule act. \* \* \*." (Emphasis supplied.) At pp. 640-641.

The Court, in *City of Grand Haven v. Grocer's Cooperative Dairy Company*, 330 Mich. 694, considered a municipal ordinance relating to the pasteurization of milk. It was asserted by plaintiff that the ordinance was invalid on the ground that the State had enacted statutory provisions which covered the field of pasteurization. The Court found that "by enactment of the pertinent statutory provisions, the legislature intended to and did take over *plenary* control of pasteurization of dairy products." (Emphasis supplied.)

The Court went on to say that:

"\* \* \* There is no provision in the State law granting to cities the power to impose additional restrictions or requirements. It follows

that section 7(b) of the city ordinance, which seeks to impose an important limitation and requirement in addition to those provided in the State statute is invalid." (p. 702)

In Article VII, Section 22 of the new Constitution, the people have provided in part:

"\* \* \* Each such city and village shall have power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law \* \* \*."

The people of the State by their adoption of Section 29 of Article V and Section 2 of Article I of the new Constitution clearly established the policy of the State regarding the protection of civil rights against discrimination in their exercise or enjoyment because of religion, race, color or national origin. At no place in the new Constitution is there any delegation to municipalities of authority to regulate or jurisdiction to enforce civil rights against the prohibited discrimination.

The impact of Article I, Section 2 and Article V, Section 29 of the new Constitution demands the conclusion that the declaration and protection of civil rights is a matter of State concern. There is no inherent or delegated power in a city, such as the City of Detroit, to enact ordinances relating thereto. *Nance v. Mayflower Tavern, Inc.* (Utah, 1944), 150 P. 2d 773.

Applying these principles to the proposed ordinances in question, it is clear that the "Open Occupancy Ordinance" which would seek to bar discriminatory housing practices, and the "Property Owners' Rights Ordinance" which would seek to declare certain civil rights of persons to make disposition of their property as they see fit, will be beyond the powers of the City of Detroit after January 1, 1964, the effective date of the new Constitution.

Ordinances such as those creating a human relations commission which has as its primary purpose education, counseling, conciliation, mediation, etc., are within the authority of a city since they do not seek to create or enforce these rights. Indeed, it would seem that agencies engaging in such techniques should be encouraged.

Therefore, it is my opinion that if either the "Open Occupancy Ordinance" or the "Property Owners' Rights Ordinance" of the City of Detroit is adopted, it will be superseded by the Constitution on January 1, 1964, the effective date of the Revised Constitution.

FRANK J. KELLEY,  
*Attorney General.*