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COMMON PLEAS COURTS:
CONSTITUTIONAL LAW:
ELECTIONS:

A Common Pleas Court established pursuant to Act 260 P.A. 1929, as amended, is a city court and the judges of that court do not occupy either a state, county, or township office requiring their election at a general November election pursuant to the provisions of Sec. 5, Art. II, Constitution of 1963. The current statutes are inadequate to fix a time of election for such judges.

Common Pleas Courts established pursuant to Act 260 P.A. 1929, as amended, are not abolished by the provisions of Sec. 26, Art. VI, Constitution of 1963, relating to the office of justice of the peace.

No. 4349 July 16, 1964.

Representative Joseph A. Gillis
2312 Guardian Building
Detroit 26, Michigan

You have asked to be advised by the Attorney General on two questions stated by you as follows:

"When will the judges of the Common Pleas Court be elected under the 1963 Constitution?

"Is the Common Pleas Court abolished under Section 26, Article VI of the 1963 Constitution?"

The Common Pleas Courts were established by Act 260, P.A. 1929 which by Section 22 thereof declares that it shall be known and cited as "The Common Pleas Court Act."[1] Under the act, in any city having a population of over 250,000 inhabitants, the several courts of the justices of the peace of such city, as established and operating under the provisions of any general statute, local or special act, or the provisions of the charter of the city were consolidated into one court to be known as the common pleas court of such city. At the time of the passage of Act 260 in 1929 Detroit was the only city in the State meeting the population requirement of the act. No other city meets that population requirement as of this date, hence no other common pleas court has since been established. The 1929 act was brought under challenge before our Supreme Court in the case of *Kates v. Reading,* 254 Mich. 158 in 1931. The Court held the act to be a general law and not local in form and to operate alike on existing and future courts established under general or local law. It said that the purpose of the act was to superimpose a new organization, by consolidation of existing justice of the peace courts within a city. It upheld the population standard by finding a reasonable relation between population and the object of the act.

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[1] Act 260, P.A. 1929, appears in the Compiled Laws of 1929 at Sections 16369 through 16390. In the Compiled Laws of 1948 and C.L.S. 1961 the act appears at Sections 728.1 through 728.30, M.S.A. 1962 Rev. Vol. and 1963 Cum. Supp. Sections 27.3651 through 27.3681.

Justices of the peace were appointed by the governor during territorial times. By an act adopted August 1, 1805, justices of the peace were given cognizance of all claims or penalties not exceeding $20.00. The manner of proceeding was by warrant, issued upon application, to bring the defendant forthwith before the justice of the peace. By a subsequent act appeals were allowed to the court of the district. After the abolition of the district court in 1810, justices of the peace were given jurisdiction, by concent of the parties, of all cases of a civil nature wherein the demand did not exceed $100.00. Upon establishment of county courts in 1815, an appeal thereto was allowed from justices' courts.[2]

With the formulation of the Constitution of 1835, justices of the peace were elected for terms of four years, not to exceed four in number in each township (Article VI, Section 6). It was there provided: "In all incorporated towns, or cities, it shall be competent for the legislature to increase the number of justices." Similar language appeared in the Constitution of 1850 (Article VI, Section 17) but it was there provided: "The legislature may increase the number of justices in cities." This method of electing justices of the peace was continued in the Constitution of 1908 (Article VII, Section 15) with the provision: "The legislature may provide by law for justices in cities."[3]

Under the authority granted to it by the three Michigan Constitutions, the legislature was active in establishing justice of the peace courts in cities either pursuant to general law or by local act.[4] In Detroit, justices' courts had been established as early as 1883 by Local Act 280. That act authorized three justices of the peace in the city of Detroit to be elected at the regular charter election of the city or at the general election held in the fall. By Local Act 272 of 1885 the number of justices of the peace for the city of Detroit was increased to four. That act was amended by Local Act 460 of 1895 without changing the number of justices to be elected.[5] The act of 1895 was repealed by Local Act 426 of 1901 but the number of justices of the peace in the city of Detroit still remained at four. Subsequent changes were made by Local Act 475 of 1903, Local Act 535 of 1905 and Local Act 660 of 1907. In 1918 the city of Detroit adopted a charter under the Home Rule Act, No. 279 P.A. 1909, and in Title V, Chapter 1, Section 4, provision was made for the election of six justices of the peace within the city instead of four.[6] At the time of the adoption of the Common Pleas Court Act in 1929 the conditions then prevailing in the city of De-

[2] County courts were abolished by the Constitution of 1850.

[3] The offices of justice of the peace are to be abolished under the Constitution of 1963 (Article VI, Section 26).

[4] A list of cities having some type of justice of the peace court is found in the Compiler's Note to Section 730.1 Compiled Laws 1948.

[5] The constitutionality of Act 460, Local Acts 1895, was upheld in the case of *Messenger v. Teagan*, 106 Mich. 654, albeit the act increased the jurisdiction of justices of the peace in the city of Detroit to $500.00.

[6] See Opinion No. 3450 issued May 13, 1959, O.A.G. 1959-60, Vol. 1, p. 102, 104.

troit concerning these courts were explained by our Supreme Court in the case of *Kates v. Reading,* supra, in these words:[7]

> "* * *. There were six justices, functioning independently of each other, each responsible for all matters in relation to suits commenced before him. The testimony shows that, because of growth of population of the city, increase in litigation, lack of co-ordination among the justices necessarily arising out of the independence of their functions, together with some want of co-operation among them, such delay, inconvenience, expense, and injustice resulted to litigants, counsel, and witnesses that a remedy became advisable, if not imperative. Undoubtedly, the condition could have been ameliorated by voluntary action of the justices, but it was not. Probably some of the evils were inherent in the system and could not have been cured even by personal co-operation. Act No. 260 was adopted in an attempt to better the situation. * * *." (p. 160)

Subsequent decisions by the Michigan Supreme Court make it clear that the Common Pleas Court in Detroit established pursuant to the Common Pleas Court Act is a statutory city court and not a court created by the Michigan Constitution. In *Attorney General v. Bolton,* 206 Mich. 403, the Court upheld the language of the Local Act of 1903 which authorized the Common Council of the city of Detroit to fill a vacancy in the office of justice of the peace until the next general election. In that case the Court said:

> "Assuming that justices of the peace are an integral part of the judicial system of the State, they are nevertheless local officers and their selection is matter purely of local concern."

Ray Jewelry Co. v. Darling, 251 Mich. 157, stands for the proposition that the Common Pleas Court of Detroit derives all its power and authority from the statute creating it, and jurisdiction thus conferred may not be enlarged or diminished by court rule or otherwise. An act of the legislature having the effect of extending the terms of office of judges of Courts of Common Pleas was upheld in *Doyle v. Election Commission of City of Detroit,* 261 Mich. 546. The statutory incumbency designation on the ballot for the office of judge of the Common Pleas Court was construed and applied in *Baird v. Detroit Election Commission,* 316 Mich. 657.

Section 3 of the Common Pleas Court Act provides for the nomination and election of judges of that court at the biennial spring primary and election held in each city in which such a court has been established. Section 7, Article III of the Constitution of 1963 in part provides that the

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[7] Similarity in the pattern of legislative action is to be found between the provisions of the Common Pleas Court Act and Act 269, P.A. 1933, sometimes known as The Flint Act. Act 269 appears in C.L. 1948 at Section 730.101 et seq., M.S.A. 1962 Rev. Vol. § 27.3831 et seq. Section 1 of that act provides for the consolidation of the courts of justices of the peace in cities having the conditions described in the act into a municipal court of such city and at the time of its passage was applicable to the cities of Flint, Highland Park and Dearborn. Act 269 was upheld and applied in an election contest in the case of *Attorney General v. Guy,* 334 Mich. 694.

statute laws now in force, not repugnant to the Constitution, shall remain in force until they expire by their own limitations, or are changed, amended or repealed. There is no provision in Article VI of the Constitution of 1963 relating to the judicial branch covering the time and manner of election of judges of the Court of Common Pleas. Section 5 of Article II, Constitution of 1963, reads as follows:

> "Except for special elections to fill vacancies, or as otherwise provided in this constitution, all elections for national, state, county and township offices shall be held on the first Tuesday after the first Monday in November in each even-numbered year or on such other date as members of the congress of the United States are regularly elected."

For the reasons I have hereinbefore given I come to the conclusion that the position of judge of the Court of Common Pleas is not a state, county or township office within the purview and meaning of foregoing Section 5 of Article II. In my opinion the Common Pleas Court is a city court for the purpose of determining the time and manner of the election of its judges. In this connection you are referred to Opinion No. 4205 issued by me on April 21, 1964. I answer your first question by saying that the Constitution of 1963 does not specify or control the time of election of judges of the Common Pleas Court. This being so, the election of these judges will be governed by the applicable statutes. I have already made reference to the election provision appearing in Section 3 of the Common Pleas Court Act. There is no biennial spring election under the Constitution of 1963. By Act No. 3, P.A. 1963, Second Extra Session, the legislature amended Section 4 of the Michigan Election Law, Act No. 116, P.A. 1954, to provide:

> "The term 'biennial spring election', 'spring election' or other similar term, as used in city or village charters unless otherwise defined therein, shall mean the local election to be held on the first Monday of April in every odd numbered year."

I am informed that there is no provision in the charter of the city of Detroit for the election of judges of the Common Pleas Court at any "biennial spring election" or "spring election." It appears therefore that the present statutory provisions are inadequate. I am aware of the provisions of House Bill No. 33 and House Bill No. 863 introduced by you as State Representative during the Regular Session of 1964 either of which if passed by the legislature and approved by the governor would have furnished the statutory basis for the election of judges of the Court of Common Pleas. However neither of these bills passed and each died in committee. In my judgment it is desirable and necessary that appropriate legislation be enacted fixing the time and manner for the election of judges of the Court of Common Pleas. In that connection I call your attention to the language appearing in Section 2 of Article XI, Constitution of 1963, which in part prescribes that judges of courts of record shall begin their terms of office at twelve o'clock noon on the first day of January next succeeding their election. By Section 1 of the Court of Common Pleas Act any court established pursuant to that act is a court of record with a seal.

Your second question refers to Section 26 of Article VI of the Constitution of 1963 which in part makes provision for the abolition of the office of justice of the peace. You ask whether the Common Pleas Court is abolished by this language of this constitutional section. In my opinion it is not. The concluding paragraph of Section 26 recites:

> "Statutory courts in existence at the time this constitution becomes effective shall retain their powers and jurisdiction, except as provided by law, until they are abolished by law."

The Common Pleas Court being a statutory court comes within the language above quoted from Section 26 and the provisions as to retention of powers and jurisdiction as therein stated are applicable. The framers of the Constitution of 1963 clearly contemplated the continuation of the Common Pleas Court in Detroit as is shown by the following quotation from the Address to the People appearing in explanation of Section 26:

> "The second paragraph of the section continues in existence the several statutory courts created under the present constitution. Included are the Recorder's court and Common Pleas court in Detroit, Superior court in Grand Rapids, municipal courts throughout the state and the Court of Claims. These courts are unchanged by this section, but the legislature has the power to abolish them or transfer their duties elsewhere."

In my judgment the office of justice of the peace required to be abolished under the language of Section 26, Article VI, Constitution of 1963, is that of justice of the peace elected in organized townships pursuant to Section 15 of Article VII, Constitution of 1908.

FRANK J. KELLEY,
Attorney General.

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AGRICULTURE, DEPARTMENT OF: Livestock auctions.
AUCTIONS: Livestock-producers' proceeds account.

Section 3a of Act 284, P.A. 1937, requires each dealer, broker or agent operating a livestock auction to deposit in the producers' proceeds account an amount equal to that due livestock sellers or consignors to such sales within 7 days of such sale. Such duty is not affected by the status of uncashed checks written against the account for other sales.

No. 4261 July 17, 1964.

Mr. George S. McIntyre
Director, Department of Agriculture
Lansing, Michigan

You have requested an opinion concerning Section 3a of Act 284, P.A. 1937, as amended.[1]

[1] Added by Act 290, P.A. 1957; M.S.A. Rev. Vol. 1958 § 12.481(3a); C.L.S. 1961 § 287.123a.