

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.

640717-1

**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.

You have indicated that in auditing the "producers' proceeds accounts" of various livestock auctions your department has found instances where an account had uncashed checks drawn against it and, taking such checks into consideration, the funds in the account were insufficient to cover both the checks and the money due livestock sellers or consignors of livestock sold or consigned through the latest livestock auction.

Section 3a, *supra*, reads as follows:

"Each dealer, broker or agent operating a livestock auction, in addition to providing a bond as required by this act, shall maintain a 'producers' proceeds account.' Within 7 calendar days following each livestock auction the dealer shall deposit in the producers' proceeds account funds which shall be equal to the total amount of money due the livestock sellers or consignors of livestock sold or consigned through the livestock auction. Failure to make such deposits in their entirety shall constitute a violation of this section. The director shall audit from time to time the producers' proceeds account and ascertain whether the provisions of this section are being complied with. All records of the licensed dealer shall be made available to the director for the purposes of auditing the account. The entire sale price of livestock sold through the auction less commissions, handling charges, service fees and other accepted charges shall be placed in the producers' proceeds account and shall be used to pay the seller or consignor for the livestock and for no other purpose. A record of the commissions, handling charges, service fees and other charges shall be maintained by the licensee and shall be provided to the seller or consignor of the livestock at the completion of the sale."

The Attorney General² has interpreted this section as follows:

"No other money except that due to livestock sellers or consignors may be deposited by the livestock auctioneer in a producers' proceeds account. No other charges may be paid from the producers' proceeds account except those due to livestock sellers or consignors for the livestock left for sale at the auction." (syllabus)

Your first question is as follows:

"Whether there must be deposited in the producers' proceeds account within 7 days of each sale an amount equal to that due consignors to such sale, such monies to be in addition to that required to meet the demands of uncashed checks written against the account."

Within seven days after *each* livestock auction the dealer must deposit in the producers' proceeds account *the entire amount* of money due the sellers or consignors from *that particular auction*, less the charges of the auction as commissions, handling charges, service fees, etc.

The fact that there are outstanding checks against the balance of the account does not relieve the dealer from making the deposit as indicated above.

² No. 3373, O.A.G. Vol. 1 1959-60, p. 56.

Therefore, your first question is answered "yes," making it unnecessary to consider the second question.

FRANK J. KELLEY,
Attorney General.

640717.2

TOWNSHIPS: Parks.

Moneys collected by a township park commission established pursuant to Act 271, P.A. 1931, as amended, must be transmitted to the township treasurer for deposit in the general fund of the township. The fact that some of the moneys were illegally collected from boat well users and a concession stand lessee would not create a constructive trust for their benefit.

Moneys voluntarily donated by people who launched their boats at the township park must be held in trust by the township park commission as provided by Section 2 of Act 271, P.A. 1931.

No. 4274

July 17, 1964.

Mr. James T. Corden
Prosecuting Attorney
289 County-City Bldg.
Port Huron, Michigan

You have advised that the Port Huron Township Park Commission was created under Act 271, P.A. 1931.¹ You further advised that said commission is holding moneys that the Port Huron Township Board thinks should be transmitted to the township treasurer for deposit in the general fund of the township. You informed me that said moneys were obtained from five sources; namely, rental from a concession stand leased out on bids, fees charged users of boat wells, voluntary donations from people who launched boats at the township park, land sold to the state highway commissioner and land condemned by the federal government for highway purposes.

You have requested my opinion as to whether the moneys in question may be retained by the township park commission to be used for the payment of such bills as they incur in the course of their duties, or if it is mandatory for the commission to transmit the moneys to the township treasurer for deposit in the general fund of the township. Immediately the question arises, what authority did the township park commission have to collect the moneys in question? That question will now be answered.

Presumably the township park commission thought it had authority under Section 5a of Act 271 to enter into a lease of a concession stand. Section 5a states:

"Whenever the whole of a lot or parcel of land is, or has been, acquired under this act by a township park commission, such commis-

¹ C.L. 1948 and C.L.S. 1961 § 41.441 et seq. and Act 33, P.A. 1962; M.S.A. 1961 Rev. Vol. and 1963 Cum. Supp. § 5.271 et seq.