

district, nor is it authorized to revoke or suspend the right to teach in such institutions. A possible conflict of interest then between the office of member of the state board of education and the position of instructional staff member of a community college under the general supervisory power of the state board of education is remote and does not serve to bar the same person from occupying the two positions simultaneously.

Persons who are otherwise qualified to seek the office of member of the state board of education, upon their election and acceptance of that office will vacate positions on the administrative staffs of community colleges. Since the two positions are incompatible, they may not be occupied simultaneously.

FRANK J. KELLEY,
Attorney General.

640917.1

MUNICIPALITIES: Consolidation.

CITIES: Home Rule.

TOWNSHIPS: Consolidation.

Consolidation procedures discussed and applied to two cities and four adjoining townships; affirmative vote required in all affected categories; new city resulting from consolidation organizes through charter commission elected as provided by Sec. 15 of Home Rule Act.

No. 4311

September 17, 1964.

Hon. Harry A. DeMaso
State Representative
40 South Lavista Boulevard
Battle Creek, Michigan

You have requested opinion on several questions arising out of proposed consolidation of four townships and two cities in the Battle Creek area.¹ You state that the City of Battle Creek, a home rule city, is made up of portions of four townships; and that the City of Springfield is contiguous to the City of Battle Creek. The City of Springfield consists of a portion of the Township of Battle Creek. It has been proposed that petitions calling for the consolidation of the four townships and two cities be circulated in order to place the question of said consolidation on the ballot.

In connection with this proposal, the following questions are submitted for opinion:

1. Does the Home Rule Act permit consolidation of these units?

¹ The case of *Charles Hall, Plaintiff and Appellee and City of Battle Creek, Intervening Plaintiff versus Calhoun County Board of Supervisors*, involving a related but distinct question has been submitted and is awaiting the decision of the Supreme Court as of the date of this opinion. There, plaintiff sought mandamus to compel the supervisors to call an election upon petition praying for annexation to the City of Battle Creek of all of the territory encompassed within the City of Springfield. Appellant sought relief from judgment of the trial court ordering the writ to issue.

2. If so, what procedure should be followed?
3. Assuming that consolidation can be affected, will the vote on the question have to be affirmative in each of the townships and cities affected?
4. What would be the effect of an affirmative vote in some but not all of the townships and cities?
5. Could a new city with a new charter be created from the four townships and two cities?
6. If so, what procedure should be followed?

The question whether one or more cities or villages together with additional unincorporated territory may be consolidated was answered in the affirmative by one of my predecessors in O.A.G. No. 3448, November 16, 1959.² The opinion points out that Section 6 of the Home Rule Act, as amended by Act No. 84, P.A. 1919, provides specifically for such consolidation. The section provides in pertinent part as follows:

"Cities may be incorporated . . . or consolidation made . . . of 1 or more cities or villages together with additional territory not included within any incorporated city or village into 1 city . . ."³
(Emphasis supplied)

Therefore, the answer to your first question is "Yes."

Your second question asks what procedure should be followed in consolidating one or more cities with additional unincorporated territory, as in the example you state. The procedure is set forth in Section 6⁴ of the Home Rule Act, which provides in pertinent part as follows:

". . . consolidation [may be] made of . . . 1 or more cities . . . together with additional territory not included within any incorporated city or village into 1 city, by proceedings originating by petition therefor signed by qualified electors who are freeholders residing within the cities, villages or townships to be affected thereby, to a number not less than 1% of the population of the territory affected thereby according to the last preceding United States census . . . which number shall be in no case less than 100, and not less than 10 of the signatures to such petition shall be obtained from each city, village or township to be affected by the proposed change: . . . Provided further, That before any signatures are obtained on a petition . . . such petition shall have attached to it a map . . . showing clearly the territory . . . and each prospective signer shall be shown such map . . . before signing the petition. Such petition shall be verified by oath of 1 or more petitioners. . . ."⁵

Section 8 provides for filing the petition with the Clerk of the county board of supervisors and for the calling of election.

² *Report of the Attorney General, 1959-1960, Vol. 1, p. 215.*

³ Act 279, P.A. 1909 as amended, the Home Rule Act, is found at C.L. '48 and C.L.S. '61 §§ 117.1 *et seq.*; M.S.A. 1949 Rev. Vol. and supps. §§ 5.2071 *et seq.*, § 6 as last amended is found at M.S.A. 1963 Cum. Supp. § 5.2085.

⁴ M.S.A. 1963 Cum. Supp. § 5.2085.

⁵ M.S.A. 1963 Cum. Supp. § 5.2085.

Further procedural matters are discussed hereinafter.

Therefore, the answer to your second question is that the procedure is prescribed by Section 6 and 8⁶ of the Home Rule Act.

Your third question asks whether the vote on the consolidation must be affirmative in each of the townships and cities affected.

The Michigan Supreme Court dealt with this question in *Taliaferro v. Genesee Supervisors*. In that case a petition had been filed with the Genesee County Board of Supervisors to incorporate certain territory, consisting of three incorporated cities, three entire townships and portions of five other townships, as a home rule city. The physical territory was in part occupied by incorporated municipalities at the time the petition was filed. Plaintiff sought mandamus to compel the board of supervisors to call an election on the question of incorporation of the proposed new city. The Supreme Court, ruling against the plaintiff, held that the petitioner did not have the right to an election seeking to incorporate territory into a new city from territory occupied by a duly incorporated city. The Court quoted Section 2 of the Home Rule Act, which provides that each existing city shall continue until otherwise provided by law. In discussing the implications of the legislative intent, the Court said, at page 59:

"In determining legislative intent from the statutes, we conclude: . . .

(2) That to achieve a result such as is sought by petitioner, the *legislative method of consolidation would have to be employed*, giving to the electors of the several cities and unincorporated areas the opportunity, by a majority vote in each city and unincorporated area, to express approval or disapproval of consolidation. . . ." (Emphasis supplied)⁷

Thus, the answer to your third question is that the vote on the question will have to be affirmative in each of the townships and cities affected, as set forth by the Supreme Court in the *Taliaferro* case.

Your fourth question asks what the effect would be of an affirmative vote in some but not all of the townships and cities.

Section 9 of the Home Rule Act provides in pertinent part as follows:

"The district to be affected by every such proposed . . . consolidation . . . shall be deemed to include the whole of each city, village or township from which territory is to be taken or to which territory is to be annexed: Any proposed consolidations . . . shall be submitted to the qualified electors of the city, and to the qualified electors of the city, village or township from which the territory to be taken is located, and at the election when such question is voted upon, the city, village or township shall conduct the election in such manner as to keep the votes of the qualified electors in the territory proposed to be annexed or detached in a separate box from the one containing the votes from the remaining portions of such city, village or township: . . . If the returns of said election shall show a majority of the votes cast in the district to be annexed, voting separately, to be in favor of the proposed change of boundary, and if a majority of the electors voting in the

⁶ M.S.A. 1963 Cum. Supp. § 5.2085; C.L.S. '61 § 117.8; M.S.A. 1963 Cum. Supp. § 5.2087.

⁷ *Taliaferro v. Genesee Supervisors*, 354 Mich. 49, 59.

remainder of the district to be affected as herein defined, voting collectively, are in favor of the proposed change of boundary, then such territory shall become a part of the corporate territory of the city or be detached therefrom, as the case may be. . . ."⁸

Applying this language to the situation you put, and having in mind the language of the Supreme Court in the *Taliaferro* case as quoted hereinabove, the election would be conducted as follows:

The territory to be affected would include the City of Battle Creek, the four townships, and the City of Springfield. Therefore, consolidation could not be effected without an affirmative vote in each of the following, voting separately:

- (a) The City of Battle Creek;
- (b) The City of Springfield;
- (c) That portion of each of the four townships voting separately to be included in the consolidation which portion is not now included in either of the two cities.

In addition to affirmative votes by each of the categories designated above, voting separately, consolidation would require an affirmative vote by that portion of the four townships, if any, not to be included in the consolidation, voting collectively. It is not clear from your questions whether any portion of the four townships is to be excluded from the proposed consolidation; if not, such category can be eliminated.

If any of the above categories do not vote affirmatively on the question of consolidation, the statutory requirements have not been met.

Therefore, the answer to your fourth question is that the effect of an affirmative vote in some but not all of (a) the City of Battle Creek, (b) the City of Springfield, (c) that portion of each of the four townships to be included in the consolidation, voting separately, and (d) that portion, if any, of the four townships not to be included in the proposed consolidation, voting collectively, would be to defeat the consolidation. An affirmative vote in each of the categories is necessary to satisfy the statute, as interpreted by the Supreme Court in *Taliaferro*.

Your fifth question asks whether a new city with a new charter can be created from the four townships and two cities.

When consolidation of two cities and additional unincorporated territory occurs, that which results is a new city, rather than an augmentation or enlargement of the larger of the pre-existing cities involved in the consolidation. This is the factor which differentiates consolidation from annexation.

In O.A.G. 3448, cited hereinabove,⁹ my predecessor reached the conclusion that consolidation of previously existing cities and outlying unincorporated territory results in the creation of a new corporate entity.

Therefore, your fifth question is answered "Yes."

Your sixth question asks what procedure is to be followed in establishing a charter for the new city.

⁸ C.L.S. '61 § 117.9; M.S.A. 1963 Cum. Supp. § 5.2088.

⁹ Footnote 2, *supra*.

In O.A.G. 3448, this question was considered in depth, and the conclusion reached that since the Home Rule Act spells out no procedure specifically designed to obtain a charter for a city resulting from consolidation proceedings, therefore no procedure for effectuating the consolidation exists.

After extended examination of the relevant statutes and cases, it is my conclusion that the intent of the legislature as expressed in Section 6 and following of the Home Rule Act, and as construed by the Michigan Supreme Court in *Taliaferro*, cannot properly be thwarted merely for want of detailed language specifically dealing with the procedure for implementing the organization of the government of the new city. When the electors vote on the question of consolidation, they are in effect voting on the question of intent to incorporate a new city. Therefore, Section 15 of the Home Rule Act is applicable and its procedures may be employed.¹⁰

It is my conclusion that the provisions of Section 15 of the Home Rule Act, providing that those electors residing within the territorial limits of the proposed new city shall have been entitled to vote for 9 members of a charter commission, can be used to provide a method for organizing the government of a city created by consolidation. This can be done by use of a separate ballot under the heading "Candidates for members of the charter commission," as set forth in Section 15 of the Home Rule Act.

Therefore, the answer to your sixth and last question is that the procedure outlined in Section 15 of the Home Rule Act for use of a separate ballot for members of the charter commission be followed, to the extent applicable to the consolidation you describe.

FRANK J. KELLEY,
Attorney General.

640922.1

**BANKS AND BANKING: Debt Cancellation Contracts.
INSURANCE:**

Use of debt cancellation contracts by bank whereby bank undertakes to cancel the balance of a debt in the event of the death of debtor constitutes insurance.

No. 4351

September 22, 1964.

Mr. Allen L. Mayerson
Commissioner of Insurance
Lansing, Michigan

You have requested the opinion of the Attorney General on the following questions:

"1. Is a bank which enters into debt cancellation contracts with its debtors engaged in the business of insurance?

"2. If the answer to question number 1 is in the affirmative, is the regular execution of such contracts subject to supervision and regula-

¹⁰ E.g., City of Dearborn. C.L.S. '61 § 117.15; M.S.A. 1963 Cum. Supp. § 5.2094.