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TOWNSHIPS: Board, membership of.

Section 70 of Chapter 16, Revised Statutes 1846, as last amended by Act 2, P.A. 1952, 1st Ex. Sess., which provides that the supervisor, clerk, and treasurer are voting members of the township board is constitutional.

No. 4414

April 6, 1965.

Hon. John Bennett
State Representative
Box 119
Lansing, Michigan

By letter dated February 8, 1965 you have sought my opinion with reference to the membership of the township board. From the letter accompanying your request you are concerned with the constitutionality of the statutory provision that the supervisor, treasurer and clerk as elected officers in the executive branch are voting members of the township board thereby exercising the legislative power.

Section 70, aforesaid, as last amended by Act 2, P.A. 1952, First Extra Session, provides as follows:¹

"The supervisor, 2 trustees, the township treasurer and the township clerk, shall constitute the township board, any 3 of whom shall constitute a quorum for the transaction of business: Provided, That in townships now or hereafter having a population of 5,000 or over as determined by the last federal decennial census or by any federal decennial census hereafter taken or now or hereafter having 3,000 or over registered electors, the supervisor, the township treasurer, the township clerk and 4 trustees, to be elected by the registered electors of the township as provided in section 13 of chapter 1 of part 4 of Act No. 351 of the Public Acts of 1925, as amended, being section 171.13 of the Compiled Laws of 1948, shall constitute the township board, any 4 of whom shall constitute a quorum for the transaction of business, and the township clerk shall be the clerk of the township board: Provided however, That the electors of such township having a population of 5,000 or over, or having 3,000 or over registered electors, shall adopt the provisions of this section by a majority vote at any annual township meeting, or shall have adopted the provisions of this section prior to this amendatory act."

The constitutional provision involved is Article III, Section 2 of the Michigan Constitution of 1963 which provides:

"The powers of government are divided into three branches: legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution."

The Constitution also provides specifically for the make-up of the township board. Article VII, Section 18 states:

¹ C.L.S. 1961 § 41.70; M.S.A. 1961 Rev. Vol. § 5.62.

"In each organized township there shall be elected for terms of not less than two nor more than four years as prescribed by law a supervisor, a clerk, a treasurer, and not to exceed four trustees, whose legislative and administrative powers and duties shall be provided by law."

The question of whether township justices of the peace could serve as members of the township board was before the Supreme Court in *Township of Dearborn v. Dearborn Township Clerk*, 334 Mich. 673. The Court declared unconstitutional the statute which provided that township justices of the peace be voting members of the township board. The basis of this decision was that the township justices of the peace being judicial officers could not properly serve on the township board whose powers are legislative in character.

Since the decision in the *Township of Dearborn case*, supra, the people have adopted the Michigan Constitution of 1963. Article VII, Section 18 of the Michigan Constitution of 1963 expressly provides that a township supervisor, clerk and treasurer may have both legislative and administrative powers and duties as shall be provided by law.

The Michigan legislature has seen fit to provide by statute² that a township supervisor, clerk and treasurer are voting members of the township board as a legislative body. Therefore, it is my opinion that Section 70 of Chapter 16, Revised Statutes 1846, as last amended by Act 2, P.A. 1952, 1st Ex. Sess., which provides that a township supervisor, clerk and treasurer are voting members of the township board is constitutional.

FRANK J. KELLEY,
Attorney General.

² See footnote 1.