

the existence of any contract between the attorney and the state or any political subdivision thereof and any contract of employment of an attorney to appear before state agencies would normally be a contract with the client whom the attorney had been engaged to represent. Such a contract does not fall within the prohibitory language of Section 10.

Although the legislature is not free from all constitutional restraint should it undertake to control the conduct of an attorney in the practice of his profession, the legislature has the power, should it choose to exercise it, to prohibit its own members from appearing on behalf of others before state agencies, boards and commissions, at least during the time they are serving as such members and for a reasonable time thereafter. A diligent search has been made for such statutory restraint and no law has been found. I direct your attention, however, to Section 750.411b C.L. 1948, M.S.A. 1954 Rev. Vol. § 28.643(2), which prohibits members of the legislature from accepting employment at excessive compensation by persons affected by proposed legislation and prohibits the payment for services in connection with passage or defeat of legislation. I do not consider the language of this statute to be sufficiently broad to reach the situation described in your third question.

Therefore, although the supervision of attorneys in the practice of law in this state is given to the Supreme Court and the organized Bar, the question of lawyer-legislators practicing before state agencies is also a question of public policy which may be considered by the legislature.

FRANK J. KELLEY,
Attorney General.

660406.1

COUNTIES: Board of supervisors — Maximum tax levy for road purposes.
TAXATION: County road purposes — Maximum tax levy.

The amount of taxes for county road purposes which may be levied in each county is subject to the limitation prescribed by the statute. Such limitation is not subject to increase by vote of the electors authorizing increase in the maximum millage limitation for the levy of taxes.

No. 4518

April 6, 1966.

Honorable Robert Richardson
State Senator
The Capitol
Lansing, Michigan

Transmitted with your recent request for opinion is copy of an opinion rendered by Edward G. Durance, prosecuting attorney of Midland County, with respect to future county road millage in that county stating in part:

"Michigan Statutes Annotated Section 9.120 provides that the tax for road purposes shall not exceed \$2.00 on each \$1,000.00 of assessed valuation according to the roll of the last preceding year in counties

where the valuation is more than \$100,000,000.00, and that the tax shall not exceed \$1.00 on each \$1,000.00 of assessed valuation where the valuation is more than \$300,000,000.00. I am informed by the Midland County Clerk that the present assessed valuation of Midland County is \$293,819,300.00.

"Article 7, Section 16 of the Constitution of 1963 provides that highway taxes shall not exceed one-half ($\frac{1}{2}$) of one percent (1%), (5 mills) of the preceding years valuation.

"It is the Attorney General's opinion, dated August 13, 1957, that there is no authority for the County electorate to exceed the five (5) mill limitation contained in the Constitution nor to exceed the limitation on highway taxes as provided in Michigan Statutes Annotated Section 9.120.

"Presently I understand that the road funds are provided by appropriation in the general budget by the Board of Supervisors in an amount nearly equaling one (1) mill, and the further sum realized from the present voted one (1) mill.

"It is the opinion of this office that in the year following Midland County having an assessed valuation of \$300,000,000.00 the total millage for road purposes cannot exceed one (1) mill. This would apply whether or not additional millage had been voted. It appears that in the very near future Midland County will exceed the \$300,000,000.00 valuation. Therefore, the Road Commission would not be entitled to more than they are now receiving from the Board of Supervisors. An election for additional millage would be a nullity except to allow the County a greater millage for general purposes. This does not appear to be a practical advantage as the County is not exhausting the millage available to it now. * * *"

You request my opinion upon two questions:

"1. Do the statutory limitations of 9.120 M.S.A. control where extra millage has been voted for road purposes even though such millage does not exceed the Constitutional limits found in Article 7, Section 16 of the 1963 Michigan Constitution?

"2. If a millage election is held and the approved millage conforms to the statutory limit at the time of the election, can the road taxes based on that voted millage be collected and spent in the succeeding year if the assessed valuation of the county has subsequently increased so as to require a statutory reduction in millage under 9.120 M.S.A.?"

The constitution¹ provides:

"The legislature may provide for the laying out, construction, improvement and maintenance of highways, bridges, culverts and airports by the state and by the counties and townships thereof; and may authorize counties to take charge and control of any highway within their limits for such purposes. The legislature may provide the powers and duties of counties in relation to highways, bridges, culverts and airports; may provide for county road commissioners to be appointed

¹ Section 16, Article VII.

or elected, with powers and duties provided by law. The ad valorem property tax imposed for road purposes by any county shall not exceed in any year one-half of one percent of the assessed valuation for the preceding year."

The county road law² authorizes the board of county road commissioners to determine subject to approval by the board of county supervisors the amount of county tax to be levied each year for county road purposes and limits the maximum amount of millage which the board of supervisors may order to be levied for that purpose according to the total amount of assessed valuation as fixed by the assessment roll in that county for the last preceding year. The statute³ specifies:

"Such tax shall not exceed five dollars on each one thousand dollars of assessed valuation according to the assessment roll of the last preceding year in counties where such valuation does not exceed twenty millions of dollars; such tax shall not exceed four dollars on each one thousand dollars of assessed valuation according to the assessment roll of the last preceding year in counties where such valuation is more than twenty million dollars and does not exceed forty millions of dollars; such tax shall not exceed three dollars on each one thousand dollars of assessed valuation according to the assessment roll of the last preceding year in counties where such valuation is more than forty million dollars and does not exceed one hundred million dollars; such tax shall not exceed two dollars on each one thousand dollars of assessed valuation according to the assessment roll of the last preceding year in counties where such valuation is more than one hundred million dollars and does not exceed three hundred million dollars; and such tax shall not exceed one dollar on each one thousand dollars of assessed valuation according to the assessment roll of the last preceding year in counties where such valuation is more than three hundred million dollars."

The statute contains no authorization for exceeding such millage limitation either upon vote of the electors or otherwise.

Were an election held for the purpose of increasing the total tax rate limitation as authorized by the constitution,⁴ the effect of the approval of such proposition would only be to permit the making of a levy in not to exceed the number of mills limited by the statute in excess of the constitutional 15 or 18 mills to which the particular county may be subject.⁵ Absent amendment to the statute for that purpose, increase of the total tax rate limitation would not increase the amount of millage which it is permissible to levy under said statute for county road purposes. Your first question is accordingly answered in the affirmative.

² Section 20 of Chapter IV entitled "County Road Law" of Act 283, P.A. 1909, being C.L.S. 1961 § 224.20; M.S.A. 1958 Rev. Vol. § 9.120.

³ *Idem*.

⁴ Section 6, Article IX.

⁵ Section 6, Article IX of the constitution. Section 5a, et seq., of Act 62, P.A. 1933, as added by Act 278, P.A. 1964, being M.S.A. 1965 Cum. Supp. § 7.65(1), et seq. Sections 5b and 5g were amended by Act 104, P.A. 1965.

In order that there may be no misunderstanding with respect to the precise issue presented by your second question, the following is stated by way of illustration:

Assume that the assessed valuation for the county as fixed by the assessment roll for 1965 is \$293,819,300.00 and that such valuation as fixed by the assessment roll for 1966 is in excess of \$300,000,000.00. Assume further that at the primary election to be held on August 2, 1966, the total tax rate limitation upon county taxes is increased by two mills for this purpose for a period of years commencing in 1966, there could be levied as part of the 1966 county taxes two mills for this purpose. Under the statute, two mills may be levied in case the total assessed valuation according to the assessment roll for the last preceding year does not exceed \$300,000,000.00. However, in 1967 only one mill could be levied for county road purposes as the total assessed valuation as fixed by the assessment roll of 1966 exceeding \$300,000,000.00.

660413-2

FRANK J. KEILEY,
Attorney General.

WAGE DEVIATION BOARD: Minimum Wages--Migrant Labor--Sleeping Time.

Wage deviations may not be amended within 6 months of the effective date of the Wage Deviation Board's order.

The word "traditionally" as used in Sec. 14 of the Minimum Wage Law refers to those employers who in fact engage in an agricultural occupation which customarily over the years has used transient or migrant labor on a piecework basis to harvest crops and who have conformed in their own harvesting operations with these established employment practices.

The terms of the employment agreement are to be determined from the facts and the understanding between the parties, giving consideration to the practical construction placed on it by them.

No. 4432

April 13, 1966.

Mrs. Marie L. Hager, Chairman
Wage Deviation Board
Department of Labor
Lansing, Michigan

You have submitted the following questions with respect to the construction of the Minimum Wage Law, Act 154, P.A. 1964, as amended by Act 296, P.A. 1965, M.S.A. 1965 Cum. Supp. § 17.255(1), et seq.; C.L. 1948 § 408.381, et seq.:¹

1. May the Wage Deviation Board amend deviations supposedly placed in effect at a previous date by means of the Wage Deviation

¹ Act 154, P.A. 1964 was also amended by Act 255, P.A. 1965, but such amendment is not material here.