

amount to an interference with State authority. The State permits camping on State lands whether in a tent, sleeping bag or trailer. Therefore, the township cannot under guise of zoning limit camping on State lands contrary to the policy of the Department.

We therefore hold that the Lyon Township zoning ordinance, Roscommon County, does not apply to trailers located on State lands of whatever character for the reason that the Township cannot prohibit that which the State permits.

FRANK J. KELLEY,
Attorney General.

660615.1

CIVIL SERVICE: Employees of local unit, establishment of system for.

The board of supervisors of a county or the legislative body of other local units is authorized by Section 6 of Article XI of the Constitution to adopt an ordinance or resolution establishing a merit system for the employees of the county or other local unit. Such constitutional provision is self-executing. Unless the charter of the county or other local unit authorizes the legislative body to establish a merit system for its employees without vote of the electors, such ordinance or resolution will not become effective until approved by the electorate. Calling of an election upon this issue may not be required by the filing of an initiatory petition.

No. 4534

June 13, 1966.

Honorable F. Charles Raap
State Representative
The Capitol
Lansing, Michigan

You have requested my opinion upon two questions:

"No. 1—Can the County Board of Supervisors, by a majority vote, put the questions of Civil Service for that county to a vote of the electorate?"

"No. 2—Could any interested party, by initiatory petition, signed by a number of people of that county, make the county put the question of Civil Service for that county to a vote of the electorate? If the answer is yes, what percentage of the county would be necessary to initiate such a petition and in what form?"

Section 6 of Article XI of the Constitution provides:

"By ordinance or resolution of its governing body which shall not take effect until approved by a majority of the electors voting thereon, unless otherwise provided by charter, each county, township, city, village, school district and other governmental unit or authority may establish, modify or discontinue a merit system for its employees other than teachers under contract or tenure. The state civil service

commission may on request furnish technical services to any such unit on a reimbursable basis."

With respect thereto, the address to the people stated in part:

"This is a new section permitting the establishment, modification or discontinuance of civil service merit systems in political subdivisions of the state, providing a majority of the voters of the unit affected approve."

That such provision in the constitution is self-executing and requires no implementation by legislative action is evidenced by the wording of the provision itself. The governing body of the political subdivision or municipal corporation is authorized to "establish, modify or discontinue a merit system for its employees" by ordinance or resolution. Such conclusion is further supported by reference to the proceedings of the 1961 constitutional convention which drafted the same. *Burdick v. Secretary of State*, (1964) 373 Mich. 578.

Section 6 or Article XI originated as Committee Proposal No. 76 reading:

"The legislature shall by law establish a system under which the civil divisions of the state, including cities and villages, may choose to provide for the merit principle in employment. In such civil divisions, appointments and promotions in the civil service shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive. The state civil service commission when authorized by law, shall assist on a reimbursable basis, the civil divisions of the state in the establishment and maintenance of their personnel systems."

Official Record, 1961 Constitutional Convention, Vol. I, p. 1743.

Following a discussion of the proposal, Delegate Allen objected to the provision on the basis that it would weaken home rule. Official Record, 1961 Constitutional Convention, Vol. I, p. 1746.

The following amendment was then offered by Delegate W. F. Hanna:

"Amend page 1, line 8, after 'Sec. a.', by striking out the remainder of the section and inserting 'Each city, village, township, county, school district and metropolitan government may, by a majority vote of the electors voting thereon, establish a merit system for its employees. The state civil service commission may furnish technical services on a reimbursable basis to any city, village, township, county, school district or metropolitan government requesting the same.'"

Official Record, 1961 Constitutional Convention, Vol. I, p. 1749, 1754.

Delegate W. F. Hanna spoke in favor of the amendment:

" * * * The provision which I put in this amendment prevents the legislature from passing this civil service by a special amendment or special law, but says to each local unit: you may or may not, as you desire, by a vote of your people, have civil service, and you can have civil service and tailor it to your local problem. * * *"

Idem, p. 1752, 1753.

Delegates Downs and Danhof offered the following amendment to the W. F. Hanna amendment, attempting to restore to the legislature the power to prescribe the type of civil service commission to be adopted:

“ * * * Amend the amendment, first sentence, after ‘employees’ by inserting ‘unless otherwise provided by law’; so the language will then read ‘ * * * establish, modify or discontinue a merit system for its employees unless otherwise provided by law * * *.’” *Idem*, p. 1758.

Delegate Danhof stated the purpose of this amendment:

“ * * * I submit that this would allow the legislature to make the necessary revisions if they are ever needed. It will be something that the legislature will have to take away from these local units of government and whenever you try to take something away, you’re going to run into a hue and cry. A buzzsaw, as Mr. Karn says. But it will allow it to be done. * * *.” *Idem*, p. 1758.

The Downs-Danhof amendment was not adopted. Official Record, 1961 Constitutional Convention, Vol. I, p. 1760.

The provisions of Section 6 of Article XI are self-executing and require no legislative implementation. *Sault Ste. Marie Hospital v. Chippewa County Treasurer*, (1920) 209 Mich. 684, 689.

The provisions of said section being self-executing, the legislature is without authority to limit the type of civil service which may be adopted by a county. *Soutar v. St. Clair County Election Commission*, (1952) 334 Mich. 258, 265.

Upon each occasion that this proposal was considered, discussion was had of the requirement for a vote by the electorate. While W. F. Hanna’s amendment and certain amendments which had been offered to that amendment were being debated in the committee of the whole, the point was raised by Delegate Wanger. Official Record, 1961 Constitutional Convention, Vol. I, p. 1755-56. Later the following discussion occurred immediately before the adoption of the W. F. Hanna amendment:

“MR. FORD: One final question, Mr. Chairman, and that is this: in the first sentence it reads, “. . . school district, . . . and metropolitan government may, by a majority vote of the electors. . . .” Now, is this intended to mean that upon approval by a majority vote the municipality will set this up, or does it mean that you actually have to present to the electors the specific merit system and have them vote on it, and when you want to make an amendment, you submit that specific amendment to the voters, or does it mean that you ask the voters to approve the broad concept, within limits, of the merit system?”

“MR. W. F. HANNA: Mr. Chairman, Mr. Ford, I assume that the question to be submitted to the voters is much the same type of question that you submit if you are amending a charter to provide for a merit system. You would not go into the ordinance itself or the rules and regulations itself but ask, shall we have a merit system with a board applying to our policemen or our firemen? Much the same question, Mr. Ford, is provided when you decide within a township:

do you want a personnel board for your police or your firemen under the statute? I mean, the details are left to ordinance. I certainly wouldn't want the whole civil service ordinance and all the rules and regulations subject to a vote every time you wanted to adjust it. I think the broad principle is what you submit.

"MR. FORD: Thank you.

"CHAIRMAN MILLARD: Mr. Ford, were you offering an amendment?

"MR. FORD: No. I am satisfied that Mr. Hanna is going to take care of it in Mr. Cudlip's [style and drafting] committee." *Idem*, p. 1764-65.

On second reading Mr. Martin, chairman of the committee on executive branch which had offered Committee Proposal No. 76 originally, made the following opening statement:

"MR. MARTIN: Mr. President, the committee on style and drafting made some changes in this proposal, one of which is clearly a change of substance and it appeared to the committee also that it was desirable to make clear the fact that action by the local governing body had to be taken by ordinance or resolution of the governing body—that is, the board of supervisors or council, or whatever it may be—subject to approval then by a majority of the electors voting thereon. There is an amendment pending to clarify this and to keep this as it was when it went to style and drafting. It is a self executing provision in which the local governing body would have to act and then a vote would have to be taken by the people. I hope you will go along with this amendment when it is read."

Official Record, 1961 Constitutional Convention, Vol. II, p. 2796.

The amendment to which he referred read:

"1. Amend page 1, line 3, after 'may, by' by striking 'a majority vote of the electors voting thereon or as provided by law' and inserting 'ordinance or resolution of the governing body which ordinance or resolution shall not take effect until approved by a majority of the electors voting thereon'; so that the language would then read:

"Each city, village, township, county, school district, and other governmental units or authorities performing the same or similar functions may, by ordinance or resolution of the governing body which ordinance or resolution shall not take effect until approved by a majority of the electors voting thereon, establish, modify or discontinue a merit system for its employees other than teachers under contract or tenure."

Idem.

During consideration of that amendment the following discussion occurred:

"MR. ALLEN: I wonder how this would be interpreted. I know the intent here is to broaden civil service opportunities for local units of government but I wonder if, inadvertently, there may not be some narrowing of it in this sort of situation. The city charters of some of

our cities provide that the local governing body may put in a civil service plan. This is done by ordinance and it is not referred to a vote of the people. However, when the charter was adopted, the people voted on the charter. Now, I am wondering, under the language which is offered here, whether or not a city which has a charter which authorizes the city council to put in a civil service plan without a vote of the people would be permitted to do so.

"MR. MARTIN: Mr. President, Mr. Allen, I think it would. I think that the provisions of the charter would, in that case, control the rights of the people in that particular community, that charter having been adopted under the home rule provisions.

"MR. ALLEN: The language, Mr. Martin, if literally read, seems to say that the ordinance or resolution must be approved by a vote of the people.

"PRESIDENT NISBET: Mr. Martin.

"MR. MARTIN: Mr. Allen, if you wanted to make it clear by an amendment that the provisions of home rule charter shall in any event prevail, I would see no objection to that. The committee certainly would not object, I'm sure.

"MR. ALLEN: Could I ask another question in connection with the same thing? We have also a number of cities which in their charter have provided, or even by an ordinance which has been referred to a vote of the people, have set up a civil service plan, but then they want to abolish it or they want to modify it in some way. Would your amendment require, in case civil service was to be given up, a vote of the people, even though the city charter provided that the city council could do it on its own vote?

"MR. MARTIN: Mr. President, I think not. I think the local governing body would have authority in that situation without a further vote of the people. The vote of the people refers to—let's see, reading it here—refers to 'establish, modify or discontinue.' I'm sorry, I'll change my answer. I think a vote of the people would be required to modify or discontinue.

"MR. ALLEN: Despite what the charter said?

"MR. MARTIN: No. I am proposing that we add a sentence to the effect that no part of this proviso or this proposal, section, shall in any way abrogate the provisions of existing charters.

"MR. ALLEN: Mr. President, I don't have such an amendment ready; because this language having just come in, there hasn't been the opportunity. I would be willing to have style and drafting do this.

"MR. MARTIN: We have no objection to that, Mr. Allen.

"MR. ALLEN: As long as our intent is clearly understood.

"MR. MARTIN: It is clearly understood.

"MR. ALLEN: That will be satisfactory. Thank you."

Idem, p. 2796-97.

The amendment was then adopted. Official Record, 1961 Constitutional

Convention, Vol. II, p. 2797. Committee Proposal No. 76 as thus amended was adopted and again referred to the committee on style and drafting. Official Record, 1961 Constitutional Convention, Vol. II, p. 2798.

The latter committee included that proposal as Section 13 of Article XI of the proposed constitution as reported back to the convention. Official Record, 1961 Constitutional Convention, Vol. II, p. 3045, 3071.

During consideration of that section of third reading, two amendments were adopted. These read:

"1. Amend article XI, section 13 (column 1, line 57) after 'resolution' by inserting 'of its governing body'; so that section 13, the first part of the language, will read, 'By ordinance or resolution of its governing body which shall not take effect until approved by a majority of the electors voting thereon. . . .'"

* * *

"1. Amend article XI, section 13, (column 1, line 60) after 'thereon,' by inserting 'unless otherwise provided by charter'; so the language will then read:

"By ordinance or resolution of its governing body which shall not take effect until approved by a majority of the electors voting thereon, unless otherwise provided by charter each city, village, township, county, school district and other governmental unit or authority may establish, modify or discontinue a merit system for its employees other than teachers under contract or tenure."

Idem, p. 3195.

The following explanation of the latter amendment was offered:

"MR. ALLEN: Mr. President, this is what might be called a protecting amendment which is designed to take care of what I believe was the intent on second reading. I checked with style and drafting after the language came out and 2 members of style and drafting, who have joined in this agreed.

"You will recall that there are city charters and perhaps village charters which allow civil service now and which have been voted on and passed by a majority of the electors voting thereon. These charters in some instances provide that the city council may put in a civil service ordinance without again referring it to a second vote or, if it is already in existence, may modify it without a vote of the people. So the language is simply to make it clear, so there wouldn't be any argument about it, if it is already provided in a charter.

"Now, I would say this: there might be this new element enter that we didn't think about on second reading. That is, we have provided now for county home rule with a county charter, and I suppose there might be counties which would adopt a charter which would provide that the county could put into effect civil service. And as long as this county charter is approved by a majority of the people, which of course it would have to be, then in this case—it is a future case rather than past cases in the cases of cities or villages—it wouldn't have to take a second vote. I believe—and I will ask Mr. Hanna and Mr.

Krolkowski, who are on style and drafting, to support this—that this was the intent of the convention on second reading and this language is only to make this point clear.

“VICE PRESIDENT HUTCHINSON: Mr. Hanna.

“MR. W. F. HANNA: Mr. President and fellow delegates, I had a note from Mr. Allen and somehow forgot to raise it in style and drafting. As I had something to do with drafting this when we were going through it on the floor, it seems to me perfectly clear that this was to make available to those units not having civil service the possibility of establishing civil service.

“The home rule city and village act already provides that cities and villages may, by charter, provide for civil service, and those charters were adopted and will be adopted in the future by a vote of the people. If the charter so provides for civil service, and a method of amending the charter is of course provided, and so forth, it seems perfectly ridiculous to require a vote on the charter in the future or, if they wish to install or modify civil service in accordance with their charter, to require a vote of the people. So I urge to the delegates that those cities which now or hereafter provide for civil service by charter are not restricted under section 13 but that this is made available to all those units which do not have a charter or which, by omission from their charter, do not provide for civil service. I believe this is strictly a perfecting amendment and we did not intend to interfere with home rule charter provisions of cities and villages.

“VICE PRESIDENT HUTCHINSON: Mr. Martin.

“MR. MARTIN: Mr. President, we have no objection to this amendment. It was mentioned on the floor before and we have no objection to it.” *Idem*, p. 3195-96.

The foregoing history of the consideration of this proposal in the constitutional convention leaves no doubt of the intent that the phrase “unless otherwise provided by charter,” modifies the preceding requirement for the submission of the ordinance or resolution to the electors.

Where the charter of a county, township, city, village, school district, or other governmental unit or authority now contains provision, or is hereafter amended to provide, for the establishment of a merit system for employees upon the adoption of an ordinance or resolution by the governing body and without any requirement for referendum vote by the people, such charter provisions will remain in effect and are not modified by the recitals of Article XI, Section 6, of the Constitution of 1963. Where a charter is silent as to the establishment of a merit system for employees, the method prescribed by Section 6 of Article XI would be applicable.

Turning next to your specific questions, the county board of supervisors may by a majority vote adopt an ordinance or resolution establishing a merit system for county employees and provide for the submission of the question to a vote of the electorate of the county for approval or disapproval, except that in a home rule county, when established, which by its charter permits the establishment by its governing body of a merit system

for employees without a vote of the electors, the ordinance or resolution would become effective without a referendum vote. Therefore, the board of supervisors of such a county would not be authorized to submit the question of the approval of the ordinance or resolution to the voters.

In answer to your second question, a reading of Section 6 of Article XI, supra, makes clear that it contains no authorization for placing on the ballot by initiatory petition of the people the question of adoption of a merit system for county employees. As above noted, Section 6 is self-executing and since initiatory action is not included within its provisions, it necessarily follows that no such power has been conferred.

FRANK J. KELLEY,
Attorney General.

660621.1

STATE OF MICHIGAN: Boards, Commissions, Agencies.
DEPARTMENT OF LABOR - WAGE DEVIATION BOARD: Members,
Proxy Voting by.

Under Section 7 of Act No. 154, P.A. 1964, as amended, the members of the wage deviation board are invested with duties requiring the exercise of judgment and discretion which cannot be exercised by the procedure of proxy voting.

No. 4532

June 21, 1966.

Mr. Thomas Roumell, Director
Michigan Department of Labor
Lewis Cass Building
Lansing, Michigan

In your letter of May 12, 1966, you have asked my opinion with respect to the minimum wage law*, as follows:

"May the wage deviation board utilize the procedure of proxy voting on the part of its members in connection with the conduction of its business at regular and special meetings of the board?"

Section 5 of Act No. 154 of the Public Acts of 1964, as amended by Act No. 255 of the Public Acts of 1965, hereinafter referred to as the Act, pursuant to which the wage deviation board was created, provides that a majority of the members constitutes a quorum and that recommendations or reports of the board require a vote of not less than a majority of the members.

A "quorum" as defined in Webster's New International Dictionary (2d ed.), is:

"Such a number of the officers or members of any body as is, when duly assembled, legally competent to transact business."

Making reference to an all but identical definition, the Court of Appeals of the State of New York said at page 107 in *Application of McGovern*, 291 N.Y. 104:

* Act No. 154, P.A. 1964 (M.S.A. 1965 Cum. Supp. § 17.255(1), et seq.).