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**CONSTITUTIONAL LAW:**

**CIVIL SERVICE:**

**TOWNSHIPS: Civil Service In,**

Section 6, Article XI, providing for establishment of civil service system by referendum in townships is self-executing.

No. 4507

August 29, 1966.

Rep. Alfred A. Sheridan  
8272 Weddel  
Taylor, Michigan 48180

You request opinion on the effect of adoption of establishment by Taylor Township of a civil service system in November 1964 under the authority of Article XI, Section 6, of the Constitution of Michigan of 1963, after a favorable vote of the people. As you point out, in Act 246, P.A. 1965,<sup>1</sup>

Upon these facts, you request opinion upon the following questions, each of which will be answered in turn:

Question 1. Is Article XI, Section 6 of the Michigan Constitution of 1963 self-executing or does it require implementing legislation? Article XI, Section 6 of the Michigan Constitution of 1963 provides as follows:

"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."

In the Address to the People, the following comment is made:

"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 approved. Teachers under contract or tenure are excluded in the provision. The state civil service commission is authorized to furnish technical services to local units on a reimbursable basis, if requested."

In *Thompson v. City of Dearborn*, 348 Mich. 300, (1957) the court had occasion to consider the provisions of Article VIII, Section 22 of the Michigan Constitution of 1908 providing that any city or village may acquire, own, establish and maintain, either within or without its corporate limits, parks, boulevards, cemeteries, hospitals, almshouses and all works which involve the public health or safety. At page 304 of the opinion in the *Thompson* case the court refers with approval to the holding in *Wayne*

<sup>1</sup> M.S.A. 1965 Cum. Supp. § 5.193(1) et seq.  
the Legislature prescribes a system of civil service, subject to local referendum, which may be adopted by any township but which becomes effective only when the township reaches a population of 60,000 or more. Taylor Township does not have a population of 60,000.

*Village President v. Wayne Village Clerk*, 323 Mich. 592, in which case the court said that the Constitutional provision referred to is not self-executing but requires implementation by legislative act. In *Sault Ste. Marie Hospital v. Chippewa County Treasurer*, 209 Mich. 684 (1920), Article VIII, Section 11, of the Michigan Constitution of 1908 authorizing any county in the state to appropriate money for the construction and maintenance or assistance of public and charitable hospitals, sanatorium or other institutions for the treatment of persons suffering from contagious or infectious diseases was held to be self-executing. In the *Sault* case, at pages 687 and 688, the basis for determining the self-executing nature of a constitutional provision is set forth, to wit: the grant of power must be plenary.

Following the analysis in the *Sault* case and referring to the language of Article XI, Section 6, it is my opinion that the constitutional language of Article XI, Section 6, constitutes a plenary grant of power, for the reason that it fully sets forth the method by which the power is to be implemented, namely, by ordinance or resolution of the governing bodies not to become effective until approved by a majority of electors voting thereon.

No reference is made to the need for legislative action and none can be inferred. On the contrary, the express intention of the people as set forth in this constitutional provision is that unless the charter of the municipality provides otherwise, the power to establish a civil service commission is in the governing body of the municipality. The grant of power being complete and the method of implementing such power being fully set forth in the Constitution, I am brought to the conclusion that the section is self-executing as to townships.

Reference to the Constitutional Debates confirms this construction. Committee Proposal 76 as read by the secretary, with supporting reasons, appears at pages 1743-1744 of the official record of the Constitutional Convention as follows:

"Sec. a. 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.

"Mr. Martin, chairman of the committee on executive branch, submits the following reasons in support of Committee Proposal 76:

"This proposal in its present form requires the legislature to establish a system under which civil subdivisions may choose to

provide for the merit principle in employment. The provision does not impose any obligation upon such subdivisions to come under the merit system, but it is intended to encourage and assist them in doing so. A mandatory requirement that appointments and promotions in the civil service of civil divisions of the state shall be made according to merit and fitness was considered but this optional provision seemed preferable.

"The constitution, if this provision is included in it, would make it obligatory on the legislature to establish by statute a system which civil divisions, including cities and villages, could choose to come under. In local units which exercise their option to enter the system, the provision specifies that appointments and promotions in the civil service shall be made according to merit and fitness to be ascertained by competitive examination, as far as practicable. The legislature is given discretion to legislate as to the details for conforming to these standards.

"The provision also gives recognition to assistance on a reimbursable basis by the state civil service commission, when authorized by law, to the local units in installing and maintaining their personnel systems.

"The intent of this proposal is to encourage local governmental units in adopting the merit principle, and to facilitate them by making assistance available from the state personnel agency, without making it a constitutional requirement that all civil divisions conform to the merit principle in civil service appointments and promotions.

"It should be added that both New York and Ohio have had somewhat similar constitutional provisions for many years.

"The committee on local government was asked for its opinion though no jurisdiction was specifically assigned on this matter. A majority of that committee are of the view that the subject matter of the proposal is legislative in character and not necessary in the constitution."

With respect to the role of the legislature, Delegate Wanger commented, at page 1745:

"MR. WANGER: The second question I should like to ask: I would like to ask if my understanding about the legal effect of this is correct, namely, that the legal effect of this section is exactly the same as the one providing for a governor's mansion. It merely sets out a goal to be achieved and places the legislature under a moral mandate to achieve it but it in fact is in no way self executing. Is that a correct understanding of it?"

"MR. POLLOCK: Yes, Mr. Chairman, we say the legislature shall. Of course, there is no way, as we have indicated a good many times, to force the legislature to do this."

The proposal was amended and referred to the committee on style and drafting at page 1784 as follows:

"The committee recommends that the following be included in the constitution:

"Sec. a. Each city, village, township, county, school district and metropolitan government may, by a majority vote of the electors voting thereon, establish, modify or discontinue a merit system for its employees except teachers under contract or tenure. 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."

It was reported by style and drafting at page 2796 as follows:

"Sec. a. Each city, village, township, county, school district, and OTHER GOVERNMENTAL UNITS OR AUTHORITIES PERFORMING THE SAME OR SIMILAR FUNCTIONS [metropolitan government] may, by a majority vote of the electors voting thereon OR AS PROVIDED BY LAW, establish, modify or discontinue a merit system for its employees OTHER THAN [except] teachers under contract or tenure. The state civil service commission may ON REQUEST furnish technical services TO THEM on a reimbursable basis. [to any city, village, township, county, school district or metropolitan government requesting the same.]"

At 2796, Delegate Martin said:

"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." (Emphasis supplied)

The proposal was then amended as follows and ultimately passed in its present form:

"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. The state civil service commission may on request furnish technical services to them on a reimbursable basis."

Thus, the constitutional debates show that the delegates were at pains so to redraft and rephrase the provision under discussion as to make it self-executing and it is clearly self-executing as to townships.

Your second and third questions relate to the status of the Taylor

Township civil service system, which was adopted prior to the enactment of Act 246, P.A. 1965. In view of the answer to your first question, that Article XI, Section 6 of the Michigan Constitution of 1963 is self-executing as to townships, the civil service system of Taylor Township, adopted after the effective date of the 1963 Constitution, became effective and is not rendered nugatory by Act 246, P.A. 1965.

FRANK J. KELLEY,  
*Attorney General.*

660829.1

**BONDS:** Qualified bonds of school districts.

**CONSTITUTION OF 1963:** School Bond Loan Fund.

**SCHOOLS:** Bond Loans.

**STATE TREASURER:** Payment of principal and interest on qualified school district bonds.

Authority of State Treasurer and procedures to be followed in paying from the School Bond Loan Fund principal and interest on qualified school bonds upon presentment by a bondholder.

No. 4508

August 29, 1966.

Hon. Allison Green  
State Treasurer  
Capitol Building  
Lansing, Michigan

You have requested my opinion on what procedures should be followed by the state treasurer preparatory to making loans to local school districts which are unable to make payments on principal and interest of qualified school district bonds.<sup>1</sup>

Loans to bonded school districts are authorized by Article IX, Section 16, Constitution of 1963, which in part contains the following pertinent language:

"If the minimum amount which would otherwise be necessary for a school district to levy in any year to pay principal and interest on its qualified bonds, including any necessary allowances for estimated tax delinquencies, exceeds 13 mills on each dollar of its assessed valuation as finally equalized, or such lower millage as the legislature may prescribe, then the school district may elect to borrow all or any part of the excess from the state. In that event the state shall lend the excess amount to the school district for the payment of principal

<sup>1</sup> In your letter of request you stated that you were familiar with Opinion No. 4422 issued by me on March 12, 1965, in which it was ruled that Article IX, Section 16, Constitution of 1963, requires school districts to borrow and the state to lend sufficient sums to cover debt service payments on qualified bonds of school districts but that this requirement is not a pledge of the full faith and credit of the state; the Municipal Finance Commission however may and must enforce the duty of the school district to borrow and have the state to lend the necessary amounts.