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PROBATE COURT: Probate district, approval by each affected county.
COUNTY: Every county is now "organized."

Authority of the legislature to create a probate district of more than one county is subject to the requirement that creation of the district be approved by the voters of each affected county.

A probate district is required to include the entire area of each of the counties comprising the district.

Each of the counties of the state is now organized. The terms "organized county" and "county organized for judicial purposes" are now synonymous with "county."

No. 4616 December 4, 1967.

Honorable Donald E. Holbrook, Jr.
State Representative
The Capitol
Lansing, Michigan 48902

Your request for opinion cites Sections 15 and 16, Article VI of the Michigan Constitution of 1963, which read:

> "Sec. 15. In each county organized for judicial purposes there shall be a probate court. The legislature may create or alter probate court districts of more than one county if approved in each affected county by a majority of the electors voting on the question. The legislature may provide for the combination of the office of probate judge with any judicial office of limited jurisdiction within a county with supplemental salary as provided by law. The jurisdiction, powers and duties of the probate court and of the judges thereof shall be provided by law. They shall have original jurisdiction in all cases of juvenile delinquents and dependents, except as otherwise provided by law.
>
> "Sec. 16. One or more judges of probate as provided by law shall be nominated and elected at non-partisan elections in the counties or the probate districts in which they reside and shall hold office for terms of six years and until their successors are elected and qualified. In counties or districts with more than one judge the terms of office shall be arranged by law to provide that not all terms will expire at the same time."

You request my opinion upon the following questions which will be answered seriatim.

> "1. Can the legislature district the probate courts without a vote of the people of the counties involved and without amending the Michigan Constitution?"

Section 15 authorizes the legislature to create or alter probate districts of more than one county "if approved in each affected county by a majority of the electors voting on the question."

Section 15 originated in the constitutional convention as Committee Proposal 94a. As originally introduced by the Committee on Judicial Branch,

it did not contain a requirement for a referendum vote.[1] During the consideration of this proposal in the Committee of the Whole, an amendment which would have required approval by the electors of each county was offered.[2] Adoption of that amendment was opposed by Chairman Danhof, speaking on behalf of the Committee on Judicial Branch, on the ground that this was a legislative detail. He argued that without the amendment, the legislature would be free to require a vote of the electors if deemed advisable and that the Constitution should not "tie the hands" of the legislature by imposing such a mandatory enactment.[3] Following debate, the amendment as then offered was defeated.[4]

However, during the consideration of this committee proposal on second reading, an amendment in slightly different wording which would require "approval by a majority of the voters of each county voting separately on the question" was again offered and adopted.[5]

That history of Section 15 serves only to underscore the mandatory character of the requirement of approval by the voters of each affected county which is exacted by the plain and unambiguous wording of Section 15. Therefore, this question is answered, "No."

"2. What is meant by 'county organized for judicial purposes'?

"3. Are all counties organized for judicial purposes and if not, which counties are not so organized?"

The phrase "county organized for judicial purposes" did not originate with the 1963 Constitution. Instead, the identical phrase appears in the corresponding provisions of both the 1850 and 1908 Constitution.[6]

The term "organized county" appears in Sections 1, 3, 7, and 14 of Article VII of the Constitution. That term likewise appeared in the corresponding provisions of both the 1850 and 1908 Constitutions. Its genesis is explained by Willis E. Dunbar's, *Michigan: A History of the Wolverine State*:[7]

"The spread of settlement in Michigan may be judged by the establishment of counties. When a considerable number of settlers had bought land in a given area, the Territorial legislature generally provided them with a county government. Often the legislature would 'establish' a county, specifying its boundaries and giving it a name, and then temporarily attach it to another county for governmental purposes. When the population had reached the point where the lawmakers decided to separate government for a county was justified, they passed an act providing for the 'organization' of the county, which meant the election of county officials and the institution of a separate county government. In 1837, at the time Michigan was ad-

[1] Official Record, 1961 Constitutional Convention, Vol. I, p. 1380.
[2] Idem., Vol. I, p. 1437.
[3] Idem., Vol. I, p. 1437, Vol. II, p. 2679.
[4] Idem., Vol. I, p. 1438.
[5] Idem., Vol. II, pp. 2678-81.
[6] Section 13, Article VI of the 1850 Constitution and Section 13, Article VII of the 1908 Constitution.
[7] Pages 251-52.

mitted into the Union as a state, there were 38 counties that had been established. Of these, 23 had been organized and 5 others were organized before the end of the year. The total of 28 organized counties at the close of the year 1837 included all those in the four southernmost tiers with the exception of Barry. North of these Saginaw, Mackinac, and Chippewa counties had been organized, but the latter two embraced huge areas that were later divided. It is obvious from the progress of county organization that sizable settlements had been established in the first four tiers of counties, but that the population north of these, except in the Saginaw country, was small."

In *The People v. Matthew H. Maynard,* 15 Mich. 463, 468 (1867), the Supreme Court defined the term "organized county" to be:

> "An organized county, under our constitution, signifies a county having within itself the necessary means for performing its functions independently of any other county; with its lawful officers and machinery for carrying out the powers and performing the duties belonging to that class of corporate bodies."

Section 3, Chapter 13 of the Revised Statutes of 1846[8] specified that "[e]ach organized county shall be a body politic and corporate. . . ." Section 16 of that chapter[9] requires that each organized county provide a court house at the county seat. Section 19[10] provides:

> "Unorganized counties and other districts, annexed, or hereafter to be annexed to any organized county for judicial purposes, shall, for every purpose, be deemed to be within the limits of the county to which they are, or may be so annexed."

Necessity for the adoption of the latter section is disclosed by reference to the constitutional right of trial by jury in criminal cases. The Michigan Supreme Court held that this implied the right to a trial before a jury of the county where the offense was committed.[11] The Nebraska Supreme Court in quashing an indictment returned in one county charging an offense alleged to have been committed in another county which indictment stated "has never been organized for judicial purposes," stated:[12]

> "It was doubtless intended to show, by this recital that the case was one of those contemplated by the aforesaid statute, and also the reason why the court, while sitting in Adams county, was exercising jurisdiction of a crime laid in Custer county. But even if it were conceded that this statute is in all respects a valid act, the alleged want of county organization in Custer is insufficient to bring the case within it. No such thing is contemplated by this act as a county unorganized *'for judicial puposes.'* Where a county is once organized for local government under the law providing how that may be ac-

[8] C.L. 1948 § 45.3; M.S.A. 1961 Rev. Vol. § 5.283.

[9] C.L. 1948 § 45.16; M.S.A. 1961 Rev. Vol. § 5.291.

[10] C.L. 1948 § 45.19; M.S.A. 1961 Rev. Vol. § 5.294.

[11] *Swart v. Kimball,* 43 Mich. 443, 448 (1880). See also *People v. Brock,* 149 Mich. 464 (1907), and *People v. Southwick,* 272 Mich. 258 (1935).

[12] *Olive, et al., v. The State of Nebraska,* 11 Neb. 1, 15, 7 N.W. 444 (1881).

complished, as Custer county confessedly was at and long before that time, and of which all courts were bound to take notice, it is organized for all the known purposes of civil administration—judicial as well as other—just as completely as is the oldest county in the state. . . ."

Similarly, certain of the earlier acts apportioning the house of representatives and senate in the Michigan legislature attached unorganized counties to designated organized counties for representative purposes. Thus, Section I of Act 25, P.A. 1846, specifies:

". . . in this apportionment, all unorganized counties attached to any of the aforesaid counties for judicial purposes, shall be and are hereby attached to the same counties respectively, for representative purposes. . . ."

Thus, the term "organized county" was used to refer to a county, the government of which had been organized pursuant to legislative act. As distinguished therefrom, an "unorganized county" was one which had been designated and the territory of which was defined by legislative act but which had not as yet been organized.

By way of example, by an 1829 act of the legislative council, certain territory there described was "set off into a separate county" named Ingham.[13] Another 1829 act of the legislative council attached both Ingham and Jackson counties to Washtenaw county.[14] Another 1829 act specified that both of those counties were attached to the township of Dexter, Washtenaw County.[15]

As destinguished therefrom, Act 98 of the Laws of 1837-38 was adopted to "organize the county of Ingham." Section 1 provides:

"That the county of Ingham be and the same is hereby organized, and the inhabitants thereof entitled to all the rights and privileges to which by law the other counties of this state are entitled."

Section 2 specifies:

"All suits, prosecutions and other matters now pending before any court, or before any justice of the peace of Jackson county, to which the said county of Ingham is now attached for judicial purposes, shall be prosecuted to final judgment and execution; . . ."

Section 4 requires the election of county officers for terms of office to expire on the last day of December 1838. Section 6 specifies that the act shall take effect on the first Monday in June 1838, which was also the date fixed for said election.

The term "county organized for judicial purposes" was used to distinguish between a county so organized and one which was attached to another county "for judicial purposes."

Since each of the 83 counties of the state have long since been organized, those terms have lost any remaining significance and are presently synonymous with "county."

[13] Territorial Laws, Vol. 2, p. 735.

[14] Territorial Laws, Vol. 2, p. 745.

[15] Territorial Laws, Vol. 2, p. 787.

"4. Can the legislature interpret the phrase 'county organized for judicial purposes' (Art. VI, Sec. 15) so that we can legislate probate districts?"

As limited by Section 15, this can only be done "if approved in each affected county by a majority of the electors voting on the question." It follows in answer to your question that the legislature is not free to so construe Section 15 as to avoid the necessity for such approval.[16]

"5. What is the meaning of the phrase 'probate district' in Article VI, Section 16?"

Under Section 14, Article VII of the 1908 Constitution, each county was required to elect a probate judge to serve as the judge of the probate court of that county. As specified by Sections 15 and 16 of Article VI of the 1963 Constitution, the legislature may create with the approval of the voters of the respective counties a "probate court district" or "probate district" of more than one county. Each district, irrespective of the number of counties included therein, would have one probate court, the judge or judges of which would henceforth be elected by the voters of that district. In that respect the probate court districts would be comparable to those present judicial circuits which are composed of more than one county and in which the judge or judges of the circuit court of that circuit are elected. Inasmuch as the probate court of such a district will replace the probate court of each of the counties comprising the district, such district must, of course, take in the entire area of each of the counties.

FRANK J. KELLEY,
Attorney General.

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BROKERS: Motor Vehicles.
MOTOR VEHICLES: Brokering.

A person who conducts the business of brokering vehicles required by the Michigan vehicle code to be registered must be licensed by the Secretary of State who may designate such license as that of a broker.

A broker of new motor vehicles is not required to have a manufacturer's franchise.

A broker of motor vehicles must have an established place of business appropriate for the legitimate operation of a brokerage.

No. 4594 December 5, 1967.

Honorable James M. Hare
Secretary of State
The Capitol
Lansing, Michigan

In your letter of July 19, 1967, you review your present policy towards applications of brokers of motor vehicles for dealer licenses under the provisions of the Michigan vehicle code, Act 300, P.A. 1949 as amended,

[16] *Beacon v. Kent-Ottawa Metropolitan Water Authority*, 354 Mich. 159, 171 (1958).