

well be dependent thereon. Presumably, the legislature in enacting said section in the first instance, as well as the 1941 amendment thereto, was of the opinion that any question with respect thereto should be readily subject to determination and, therefore, should not be dependent upon whether an individual office-holder had waived the compensation to which he would otherwise have been entitled.

For those reasons, both of your questions are answered in the negative.

FRANK J. KELLEY,
Attorney General.

700303.1

JUDGES: Change in date of election.

CONSTITUTION: Constitutional amendments required to authorize legislation.

Amendments to the state constitution with respect to the date of election and the length of the term of state judges would be required in order to authorize the adoption of legislation to provide for their election in November of the odd-numbered years.

No. 4693

March 3, 1970.

Hon. Alfred Sheridan
State Representative
Capitol Building
Lansing, Michigan

Your request for opinion advises that you contemplate the introduction of legislation for the purpose of providing for the election in November of the odd-numbered years some or all of the following judges: (1) judges of the recorder's court; (2) probate judges; (3) circuit judges; (4) district court judges. You inquire as to the constitutionality of legislative measures to accomplish those changes.

Of the officers which you cite only two, circuit judges and probate judges, are constitutional officers. The Constitution requires that those officers be elected and that their term of office commence at twelve o'clock noon on the first day of January, next succeeding the date of their election. Art. XI, Sec. 2. The sole provision with respect to the date of their election is the requirement of Article II, Section 5, that all regular elections for state, national, county and township offices shall be held on the first Tuesday after the first Monday of November in each even-numbered year.

Circuit judges are state officers. Probate judges, while elected at least in most areas of the state by counties, are likewise recognized for many purposes to be state officers. Following the effective date of the present constitution, it was held that the judges of the Detroit recorder's court were state rather than city officers, and hence, required by Article II, Section 5, to be elected at the general November election held in the even-numbered years. O.A.G. 1963-64, No. 4225, p. 295. Judges of that court were elected in 1966 for terms of six, eight and ten years. There-

after their terms will be for six years commencing at noon on the first day of January, next succeeding their election. M.C.L.A. § 168.426j, M.S.A. 1969 Cum. Supp. § 6.1426(10).

District court judges were established by implementing legislation adopted pursuant to the constitutional mandate of Article VI, Section 26 of the Michigan Constitution, to replace justices of the peace and circuit court commissioners. The district courts, while not a court of record, are, nevertheless, part of the one court of justice existing in this state as specified by Article VI, Section 1. District court judges are, therefore, state officers. In multi-judge districts, judges were originally elected for a term of four, six or eight years. M.C.L.A. § 600.9926, M.S.A. 1969 Cum. Supp. § 27A.9926. Thereafter their term of office will be six years commencing at noon on the first day of January, next following their election. M.C.L.A. § 168.467i, M.S.A. 1969 Cum. Supp. § 6.1467(9).

Certain circuit judges were elected between 1964 and 1966 for a term of other than six years. However, their regular term thereafter will be six years in length commencing at noon on the first day of January, next following their election. Art. VI, Sec. 12, Mich. Const.; M.C.L.A. § 168.419, M.S.A. 1969 Cum. Supp. § 6.1419. In 1964 certain probate judges were elected for eight year terms. However, the length of their regular term thereafter will be six years commencing at twelve o'clock noon on the first day of January, next succeeding their election.

In view of such constitutional provisions and particularly Article 2, Section 5 legislation to implement the election of state judges would not presently be constitutional. Instead the constitution would first have to be amended to authorize the adoption of the required statutory amendments for that purpose. If desired this office will be glad to discuss the required amendments with either yourself or a member of the Legislative Service Bureau.

FRANK J. KELLEY,
Attorney General.

700305.1

MOTOR VEHICLES: Overweight vehicles.

CRIMINAL LAW: Scienter.

The owner or lessee of a motor vehicle operated on the state highways is subject to criminal penalties even though he personally had no actual knowledge of the violation where he authorizes another person to load and drive the vehicle.

No. 4678

March 5, 1970.

Hon. Willis F. Ward
Chairman
Michigan Public Service Commission
5th Floor, 7-Story Office Building
Lansing, Michigan 48913

You have requested the opinion of this office relative to certain amendments to Section 724(c), Act 300, P.A. 1949, as amended; M.S.A. 1969 Cum. Supp. § 9.2424. More specifically, you have asked: