

first year costs to such regional centers for all types of admissions of mentally ill persons including temporary orders, diagnostic orders, final commitments, voluntary admissions?"

The statute relates only to patients committed to state facilities as public pay patients. Therefore the statute has no application to voluntary patients. As to patients ordered admitted to state regional diagnostic and treatment facilities, as public pay patients, on temporary orders, diagnostic orders, and final commitment, the above quoted statute specifically makes the county of residence liable to reimburse the state for the first year's care and maintenance of such state patient.

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CONSTITUTION OF MICHIGAN: State Highway Commission.

HIGHWAYS AND ROADS: State Highway Commission.

Legislation to establish a department of transportation and transfer function of the department of state highways to such department would violate Article V, Section 28 of Michigan Constitution of 1963.

Authority to administer public mass transportation functions related to air, rail, water, motor carriers, may be conferred by the legislature upon the State Highway Commission.

No. 4713

January 20, 1971.

Mr. Charles H. Hewitt, Chairman
Michigan State Highway Commission
Fourth Floor Highway Building
Lansing, Michigan

By letter dated October 15, 1970, you ask two questions, the first of which is paraphrased as follows:

Could the legislature establish a Department of Transportation and transfer the functions of the Department of State Highways to such department and subject the State Highway Commission, a Constitutional body, to its administrative control?

The Michigan legislature is the repository of all legislative power subject only to limitations and restrictions imposed by the constitution. The constitutionality of state legislation must be determined in light of such limitations and restrictions imposed by the people through the constitution. These restrictions may be expressed or fairly implied. *Oakland County Taxpayers' League v. Oakland County Supervisors* (1959), 355 Mich. 305; *Washington-Detroit Theatre Co. v. Moore* (1930), 249 Mich. 673; *In re Brewster Street Housing Site* (1939), 291 Mich. 313; *Attorney General, ex. rel. O'Hara v. Montgomery* (1936), 275 Mich. 504; *Moore v. Harrison* (1923), 224 Mich. 512; *Child Welfare Society of Flint v. Kennedy School District* (1922), 220 Mich. 290; 16 *Am. Jur. 2d* "Constitutional Law" § 228 *et seq.*

The framers of the Michigan Constitution of 1963 proposed to the people, "a new section" to establish a bipartisan state highway commission to administer the highway department and exercise control over state trunkline highways. Official Record Constitutional Convention 1961, Vol II, p. 3383.

Article V, Section 28 of the Michigan Constitution of 1963 in part reads:

"There is hereby established a state highway commission, which shall administer the state highway department and have jurisdiction and control over all state trunkline highways and appurtenant facilities, and such other public works of the state, as provided by law."

The language is unambiguous and expresses the mandate that only the State Highway Commission shall administer the highway department and exercise control over state trunkline highways and appurtenant facilities. The existence of the highway commission as the administrator of the highway department and the jurisdictional authority over state trunkline highways does not depend upon an act of the legislature. However, appearing at the end of paragraph 1 of Section 28 we read the provision "as provided by law." Since the highway commission is established by the constitution, this provision "as provided by law" must relate only to the manner and method by which the State Highway Commission shall exercise its administrative control; but nevertheless to be exercised by the State Highway Commission and no other body.

The scheme is so plain as to leave no doubt that the legislature is thus limited in respect of its power over the highway commission as established. The legislature could not, without rendering the mandates expressed in the aforementioned paragraph 1 completely nugatory, enact a law transferring those functions to the supervisory control of another agency or department.

Prior to the adoption of the Michigan Constitution of 1963, governmental administration of state highway affairs was performed by the office of highway commissioner which existed by virtue of a legislative enactment. The office was a single highway commissioner elected by the people.

The framers by proposing Section 28, Article V, must have intended to insure that state highway functions would be performed by an appointive bipartisan 4-member commission. The intended objects of a constitutional provision must be gleaned from the language considered in conjunction with the known conditions of affairs out of which it arose. *Civil Service Commission v. Auditor General* (1942), 302 Mich. 673.

The need for some legislative power over the State Highway Commission was the subject of debate at the constitutional convention when the first paragraph of Section 28, Article V, was presented for discussion. The delegates were concerned as to whether the comma before the words "as provided by law" should be removed. It was suggested that if the comma were left in, the words "as provided by law" would modify everything expressed in the subject paragraph and if the comma were removed it would modify only "such other public works."

At page 3122, Vol. II of the Official Record of the 1961 Constitutional Convention of the State of Michigan, Mr. Hanna stated as follows:

"Mr. President and fellow delegates, I would recommend that you

defeat the Wanger amendment. We have, for the first time, written into this constitution the term 'trunkline highways.' Now this is already statutorily defined and we don't know what they are going to say a 'trunkline highway' is, and if you adopt the Wanger amendment, we have got to go on in this constitution and define what we mean by a 'trunkline highway.' We cannot even leave that definition to the state law anymore. Then we will have to go into this constitution and define 'appurtenant facilities' because if we adopt the Wanger amendment they cannot define that by law. Then you would limit it to 'public works' which would be the only thing that could be provided by law.

"I think that the comma should stay so that the legislature can classify and provide and define what are 'state trunkline highways,' what are 'appurtenant facilities' and, certainly, there is no problem; they will not give the state highway department anything that is not either a public work, a highway or appurtenant facility." (Emphasis supplied)

Pertinent, also, is the third paragraph of Section 28, Article V, Constitution of 1963, which reads:

"The state highway commission shall appoint and may remove a state highway director, who shall be a competent highway engineer and administrator. He shall be the principal executive officer of the state highway department and shall be responsible for executing the policy of the state highway commission."

This provision mandates the highway commission to appoint a state highway director. The provision also requires that the highway director be responsible for executing the policy of the State Highway Commission. It is patent that the legislature could not, without violating these clear and unambiguous constitutional provisions, transfer that power of appointment from the highway commission to another agency, nor could the legislature impose upon someone else the responsibility of executing the policy of the State Highway Commission.

Accordingly, your first question is answered in the negative.

Your second question is stated as follows:

Could the legislature enact a statute transferring governmental administrative control of mass transportation functions in the areas of aeronautics, water and motor carriers, presently operating within the Department of Commerce and other agencies, to the Michigan State Highway Commission?

Based upon the principles expressed in answer to your first question, it is my opinion that any function which does not come within the meaning of "trunkline highway and appurtenant facilities, or such other public works" could not be placed within the administrative control or jurisdiction of the State Highway Commission by the legislature.

Accordingly, it is necessary to determine whether mass transportation functions as proposed will come within the meaning of the aforesaid terms. I presume that mass transportation functions as proposed involve furnishing facilities for public travel such as railroads, buses or similar modes of public transportation.

Words appearing in a constitutional provision are given their natural, obvious and ordinary meaning. The courts have said that a constitution is a living instrument and should be interpreted in such a manner as to be adaptable to the necessity of changing conditions. *John Hancock Mutual Life Insurance v. Ford Motor Company* (1948), 322 Mich. 209.

Appurtenant facilities are those facilities that are related in some measure to state trunkline highways. A thing is appurtenant to something else when it stands in the relation of an incident to a principal and is necessarily connected with the use and enjoyment of the latter. *McClintock-Marshall v. Ford Motor Co.* (1931), 254 Mich. 305.

The legislature has authorized the State Highway Commission to provide for facilities appurtenant to the state trunkline highway system. Under Act 295, P.A. 1966, as amended, M.C.L.A. 1970 P.P. § 213.361, the State Highway Commission may acquire land adjacent to the state trunkline highways for use as roadside parks, provide for parking spaces, rest areas, scenic areas, scenic lookouts and information lodges. Moreover, the statute authorizes the State Highway Commission to acquire lands adjacent to state trunkline highways for construction of flight strips for the landing and taking off of aircraft in order to insure greater safety for traffic.

The term "public works" is defined by *Webster's International Dictionary, 2d Edition*, as follows:

"All fixed works constructed or built for public use or enjoyment, as railroads, docks, canals, etc., or constructed with public funds and owned by the public; often, specif., such works as constitute public improvements, as parks, museums, etc., as distinguished from involved in the ordinary administration of the affairs of a community, as grading of roads, lighting of streets, etc."

The definition was cited with approval in the case of *Ellis v. Common Council of Grand Rapids* (1900), 123 Mich. 567.

The definition currently appears in *Webster's Third New International Dictionary* as follows:

"Fixed works (such as schools, highways, docks) constructed for public use or enjoyment esp. when financed and owned by the government; specif: government sponsored public improvements (as parks or playgrounds) as distinguished from work of a routine nature such as the grading and lighting of streets."

The term "public works" is discussed in O.A.G. 1939-40, page 358.

If the legislature were to authorize the State Highway Commission to administer and have jurisdiction over mass transportation functions for public use, which the State of Michigan would sponsor and directly or indirectly finance and in some measure control, such authority would be properly within the intended broad meaning of "such other public works."

Your second question is answered in the affirmative.

FRANK J. KELLEY,
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