

720403.1

HOUSING: Residential homes and apartments.

MUNICIPALITIES: Authority to create a moratorium on the building of homes and apartments.

Local municipalities such as cities, townships, charter townships and villages are without authority to impose a general moratorium prohibiting all building of residential homes and apartment dwellings, except to protect the health or safety of the community.

No. 4743

April 3, 1972.

Honorable Alfred A. Sheridan
State Representative
The Capitol
Lansing, Michigan

By recent letter you ask two questions:

1. Does the council or commission of a home rule city have the authority to create a moratorium on the building of residential homes and apartment dwellings?
2. Does the board of township trustees of a charter township or township, or the council of a village have the right to create a moratorium on the building of residential homes and apartment dwellings?

The authority of any municipality to impose the regulation upon the use of private property, including buildings thereon, is based on a reasonable exercise of the police power. Although the state constitution confers no police power of zoning directly on municipalities, zoning ordinances have been consistently upheld as valid exercises of the police power where reasonably exercised. See, for example, *Cady v. Detroit*, 289 Mich. 499 (1939), *app dis* 309 U.S. 620, 60 S. Ct. 470, 84 L. ed. 984. Where reasonably related to the public health, morals, safety or general welfare of the citizens of the municipality, zoning ordinances are a valid exercise of the municipal police power, even though the lawful use of land in certain areas may be prohibited, and even though individual owners of realty may be deprived of their right to use the property in the manner desired. See, for example, *Connor v. West Bloomfield Township*, 207 F 2d 482 (1953); *Portage Township v. Full Salvation Union*, 318 Mich. 693 (1947), *app dis* 333 U.S. 851, 68 S Ct. 735, 92 L. ed. 1933, *reh den* 68 S Ct. 1336, 334, U.S. 830, 92 L. ed. 1757. However, it is universally held that a legitimate business may not be prohibited unless the prohibition bears some relation to health, morals or welfare. See, for example, *Dequindre Development Co. v. Charter Township of Warren*, 359 Mich. 634 (1960); *Sisters of Bon Secours Hospital v. City of Grosse Pointe*, 8 Mich. App. 342 (1967); *Bristow v. City of Woodhaven*, 35 Mich. App. 205 (1971).

As we understand it, your question relates to a sweeping all encompassing prohibition by action of the governing body of the municipality forbidding any residential or apartment building anywhere in the city, village or township. Such a prohibition is unprecedented and appears on its face to be unreasonable, arbitrary and violative of the constitutional rights of the property holders, without a showing of some condition supporting such

action to protect the health or welfare of the community, and a determination based on such showing. We are advised that your constituents wish to create a moratorium in order to alleviate the overcrowding of schools. In *Molino v. Mayor & Council of the Borough of Glossboro*, 381 A 2d 401 (N.J., 1972), it was held that a zoning provision designed to keep children out of the community because more children require more schools and result in higher taxes is unconstitutional.

We are therefore brought to the conclusion that no municipality, be it home rule city, fourth class city, general act village, home rule village, charter township, or general township, can be said to have authority to prohibit "any and all" residential buildings within the territorial limits of said municipality for such purpose. Individual permits may be withheld upon reasonable showing of health or welfare hazard, but this does not include overcrowding of schools.

FRANK J. KELLEY,
Attorney General.

720405.1

LIBRARIES: Circulation Records.

PUBLIC RECORDS: Inspection of.

COUNTIES: Library Board.

Authority of county library board to adopt policy protecting library circulation records from public access or from investigative agents of federal or other public agencies except pursuant to subpoena.

No. 4742

April 5, 1972.

Honorable Joseph M. Snyder
State Representative
The Capitol
Lansing, Michigan

You ask whether the Macomb Public Library may adopt a policy recommended by the Council of the American Library Association, recognizing circulation and other records which identify library users by name and by specific materials to be confidential in nature, and providing that such records not be released except pursuant to subpoena issued by a court or other authority upon good cause shown in connection with administrative, legislative or judicial discovery procedures. You refer to section 492 of the criminal code, providing in pertinent part as follows:

"Any officer having the custody of any county, city or township records in this state who shall when requested fail or neglect to furnish proper and reasonable facilities for the inspection and examination of the records and files in his office and for making memoranda of transcripts therefrom during the usual business hours, . . . to any person having occasion to make examination of them for any lawful purpose shall be guilty of a misdemeanor. . . . The custodian