

practice of architecture or professional engineering would be for the respective boards to determine.

In response to your third question, section 19 of 1937 PA 240, as amended, exempts certain construction from the provisions of the act:

"Nothing in this act shall be construed as requiring supervision by an architect or professional engineer on private single residences for which he has rendered other professional services as herein defined.

"Nothing in this act shall prevent any owner from doing any of the architectural, engineering, or surveying work mentioned herein upon or in connection with the construction of buildings on his own property for his own use, nor be construed as preventing a person not registered under this act from planning, designing or supervising the construction of residence buildings not exceeding 3,500 square feet per building in 'calculated floor area.'" MCLA 338.569(e); MSA 18.89(19) (e)

In *Dave's Place v Liquor Control Comm*, 277 Mich 551 (1936), the court cited a well known principle of statutory construction:

"It is a general principle of interpretation that the mention of one thing implies the exclusion of another thing; *expressio unius est exclusio alterius*." 25 R.C.L. p. 981. (p. 555)

In other words, no other construction is exempt from the statute. Since we assume that all construction is supervised and the statute states that "responsible supervision of construction" constitutes the practice of architecture or professional engineering, all construction which section 19, *supra*, does not exempt must be supervised by registered architects or registered professional engineers.

FRANK J. KELLEY,
Attorney General.

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BOARD OF COUNTY COMMISSIONERS: Authority of the board to grant retroactive compensation.

Authority of the board chairman to appoint committees without prior approval of the full board of commissioners.

The board of county commissioners has no authority to grant retroactive compensation to the chairman for the past performance of duties. The chairman of the board of commissioners has no authority to appoint committees without the approval of the full board as required by the by-laws of the board of county commissioners.

Opinion No. 4772

June 12, 1973.

Honorable Gilbert DiNello
State Representative
The Capitol
Lansing Michigan 48901

Recently you requested my opinion on behalf of the Macomb County Board of Commissioners. The initial question has been rephrased to read:

May the action of the county board of commissioners of Macomb County make retroactive the payment of additional per diem by enacting resolution No. 1017 (amendment adopted November 22, 1972) to act *nunc pro tunc* when the initial payment was improperly made *ab initio*?

Section 30 of 1851 PA 156, as amended, MCLA 46.30; MSA 5.353, provides for the compensation of members of the board of commissioners. Subsection (c) provides:

"Each member of the board shall receive compensation as established for attendance at board meetings when he is serving as a member of any committee of the board when the board is not in session or when he is acting in an individual capacity as a supervisor or as a chairman of a committee in carrying out the business of the board when authorized by the board. No member of any committee shall be entitled to payment under the provisions of this subdivision where the services performed were not ordered by said board or the chairman of said board or for more than 60 days in any one year as a member of such committee, except that in counties now or hereafter having a population of more than 350,000 and not more than 1,500,000, members serving on each committee shall be entitled to payment of not exceeding a total of 120 days for each committee, but not to exceed a total of 200 days for all committee work in any calendar year, as provided under the provisions of this subdivision, when ordered to serve by the board or chairman of the board. . . . The chairman of said board as an ex officio member of the several committees of the board and for the performance of any extra duties assigned to him by the board in connection with attendance at meetings of the several committees of the board, or other assignments, the limitation of number of days for which he may receive compensation shall not apply."

1966 PA 261, § 15, as last amended by 1969 PA 137, MCLA 46.415; MSA 5.359(15), provides:

"Members of the board of commissioners shall receive such compensation as is fixed by resolution of the board of commissioners. However, compensation of members of the first board of commissioners elected under this act shall be fixed by resolution of the new board of commissioners before February 15, 1969. Changes in compensation shall become effective only when members of the board of commissioners commence their terms of office after a general election."

The purpose of Resolution No. 1017, as amended by resolution of November 22, 1972, is to provide payment to the chairman of the board of commissioners for the past performance of duties. A determination must be made whether such retroactive compensation is lawful.

In OAG 1952-1954, No 1609, p 79 (December 2, 1952), the question of the board of supervisors receiving an increase in compensation, thus amounting to a retroactive pay increase was considered in light of Const 1908, art 16, § 3, which reads:

"Neither the legislature nor any municipal authority shall grant or authorize extra compensation to any public officer, agent, employe or contractor after the service has been rendered or the contract entered into. . . ."

The above-quoted provision was succeeded by Const 1963, art 11, § 3, so as to read:

"Neither the legislature nor any political subdivision of this state shall grant or authorize extra compensation to any public officer, agent or contractor after the service has been rendered or the contract entered into."

The Attorney General's opinion noted *Attorney General v Board of Education*, 225 Mich 237 (1923), wherein the Court said:

". . . The only thing the board may not do is to grant additional compensation after the services have been rendered. . . ." [at p 242]

The opinion came to the conclusion that retroactive pay provisions in resolution form adopted by the board of supervisors are invalid in that they are in derogation of the applicable constitutional provision.

A further interpretation by the Attorney General denying an attempt to grant retroactive pay increases concerned a resolution passed by the 1929 Legislature. In OAG 1928-1930, p 321 at 325, 326 (April 12, 1929), the Attorney General said:

"Cases in point are not plentiful, but the few cases which have turned on analogous situations seem to indicate that, as long as changes in compensation by way of increase are made to operate prospectively and not retrospectively, they are valid and not in conflict with constitutional inhibitions against the granting of extra compensation after the services have been rendered. . . ."

Therefore, in answer to your initial question, it is my opinion that the action of the county board of commissioners of Macomb County which retroactively allowed for the compensation of the chairman of the board of commissioners is invalid because it is in derogation of Const 1963, art 11, § 3.

The second question posed is as follows:

"Can the chairman appoint an ad hoc retirement committee without approval of the full board of commissioners when the county commissioner's by-laws would require any appointment of the chairman are subejct to the approval of the full board?"

Section 11 of 1851 PA 156 provides for certain powers of the board of supervisors. Said section reads:

"The said several boards of supervisors shall have power and they are hereby authorized at any meeting thereof lawfully held:

* * *

"Seventeenth, To establish such rules and regulations in reference to the management of the interest and business concerns of such county, and in reference to the mode of proceeding before such board, as they

shall deem necessary and proper in all matters not especially provided for in this act or in some law of this state:”

[MCLA 46.11; MSA 5.331]

The rules and regulations enacted by the board of commissioners pursuant to § 11 are binding upon the board. Therefore, the action of the Chairman of the Board of Commissioners of Macomb County in appointing an ad hoc retirement committee without the approval of the full board of commissioners, when their by-laws require *any* appointment of the chairman to be subject to approval of the full board would be in derogation of the requirement and the establishment of the ad hoc retirement committee would be null and void. Unilateral appointment by the chairman could be permissible if the by-laws were appropriately amended by the Macomb County Board of Commissioners. Without such amendment, the chairman's actions to appoint must be in accord with the current by-laws.

Your third question is still under consideration and a second opinion will be forthcoming.

FRANK J. KELLEY,
Attorney General.

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LAW EXAMINERS, BOARD OF: Affidavit of Personal History—conviction of crime

CRIMINAL LAW: Conviction of a crime
Setting aside of conviction of a crime of a minor
Status of Youthful Trainee

Person convicted of a crime must answer in the affirmative question of the Board of Law Examiners in Affidavit of Personal History relating thereto even though subsequent court proceedings resulted in a reversal of the conviction. Person may explain subsequent court reversal of conviction in affidavit.

A person whose conviction as a minor has been set aside in conformity with 1965 P.A. 213 is deemed by law not to have been previously convicted so he may answer such question of Board of Law Examiners in the negative.

Person with status of a youthful trainee pursuant to 1966 P.A. 301 is not deemed to be convicted of a crime so that he may answer such question of Board of Law Examiners in the negative.

Opinion No. 4774

June 15, 1973.

Honorable Jack Faxon
State Senator
The Capitol
Lansing, Michigan

You have requested my opinion on the following matter:

Question 28d of the “Affidavit of Personal History” requires applicants for the Michigan Bar Examination to answer the following question: