

number of signatures and succeed or fail within the period such basis governs.

* * *

“ . . . The identity of the petition was inseparably linked with the basis it sought to comply with, and as an initiatory petition it could not and did not survive the passing of such basis and then identify itself with a new basis wholly prospective in operation . . . The Constitution plainly intends an expression of an existing sense of a designated percentage of the legal voters. Such sense may be expressed after any biennial election for governor, and if in percentage of legal voters signing the petition it meets the basis under which it was circulated, it becomes effective upon filing the same with the secretary of State at least four months before the basis is changed by a subsequent vote for governor.” [pp 544-546]

In other words, petitions and the signatures affixed to them are valid for as long as a particular basis (votes cast) remains in effect. 1963 Const, art 12, § 2, and art 2, § 9, both provide that the requisite number of signatures to initiative petitions is to be determined by a set percentage of votes cast for all candidates for governor at the last preceding general election at which a governor was elected. Therefore, the term for governor determines the time periods during which petitions may be circulated for signature and any signatures gathered during such a period are valid. Under 1963 Const, art 5, § 21, the governor serves a period of four years. Hence, signatures on petitions are to be considered valid so long as they are gathered during a single four-year term bounded on both sides by a gubernatorial election.

FRANK J. KELLEY,
Attorney General.

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COUNTIES: Board of Health; Board of County Commissioners

Board of health of a county health department may negotiate labor contracts with its employees, which contracts are subject to approval of the board of county commissioners.

A county board of health cannot execute contracts without approval of the board of county commissioners.

A board of county commissioners may regulate fees and charges of persons employed by county board of health in executing health laws and their own regulations.

Opinion No. 4825

August 14, 1974.

Honorable Earl E. Nelson
State Representative
The Capitol
Lansing, Michigan 48901

You raise three issues concerning the respective authority and duties of a county health board in relation to the county board of commissioners.

1. Can the Board of Health negotiate labor contracts without commissioner authorization?

County health departments are created pursuant to 1927 PA 306; MCLA 307.201 *et seq.*; MSA 14.161 *et seq.* The powers and duties of the county health board are provided for in section 6(1) of the act and states:

“A county or district board of health may adopt rules deemed necessary for the protection and promotion of the health and safety of the inhabitants of the county or district or persons entering therein. The rules shall be approved or disapproved by a majority vote of the full board of commissioners or, in the case of district boards of health, the boards of commissioners affected. . . .”

Because the powers and duties of county health boards are those delegated to them by the legislature, they must be found in 1927 PA 306, *supra*, itself. Section 5 of that act is the only section relating to “employment” by the health board, and provides in pertinent part as follows:

“. . . Subject to the approval of the board of supervisors, the county health department shall have the power to employ such physicians and nurses and other qualified personnel full or part time as shall be necessary to carry on its work.” MCLA 327.205; MSA 14.165

Absent a more specific grant of authority by the legislature, the power to create personnel positions and specify remuneration must reside in the county commissioners by virtue of its general grant of authority in 1851 PA 156, § 11:

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

* * *

“Ninth, To prescribe and fix the salaries and compensation of all employees of their respective counties where not fixed by law,”
MCLA 46.11; MSA 5.331

Apart from the specific authority to create positions and specify remuneration, however, section 5 of 1927 PA 306, *supra*, does enable the county health board to designate particular persons to carry out its work and to control those persons in that work. The Supreme Court in the early case of *Wilson v Newton, Circuit Judge*, 87 Mich 493, 496 (1891) stated with reference to the authority of a deputy clerk appointed by the county clerk:

“The office of county clerk is wholly ministerial, and when the law provides that a ministerial officer may appoint a deputy, for whose acts he and his sureties are responsible, and does not limit or restrict him as to whom he appoints, he has authority to appoint whomsoever he pleases. The person appointed acts for him; or, in other words, he acts through his deputy. His choice is not confined to any race, sex, color, or age. . . .”

See also OAG, 1933-1934, p 133 (December 22, 1932.)

These factors, inherent in the “power to employ,” are relevant to a determination of the appropriate bargaining agent in labor negotiations.

In the recent case of *Wayne County Civil Service Commission v Board of Supervisors*, 383 Mich 363; 184 NW2d 201 (1971), the court found the county board of road commissioners to be the duty-bound employer for the purposes of collective bargaining. The court's decision rested, in part, on a "power to employ" authority similar to that present in MCLA 327.205; MSA 14.165:

"The Constitution of 1908 authorized legislative setting up of boards of county road commissioners, 'with such powers and duties as may be prescribed by law' (art 8, § 26). So did the Constitution of 1963 (art 7, § 16).

"From as far back as PA 1909, No 283, §10 of the county road law has authorized each board of county road commissioners to 'employ' its necessary 'servants and laborers.' The section leaves no doubt of original and present intent that each board of county road commissioners shall be the employer of its employees, and that such employees shall be employees of that same board.

"Such are our reasons for previously declared agreement with the defendant road commission that it is, within the act of 1965, the 'public employer' of its employees and that it alone is the duty-bound employer particularly within the meaning and purpose of §15 of the act of 1965." 384 Mich 363, 375-376; 184 NW2d 201, 206.

See also *Wayne Circuit Judges v Wayne County*, 386 Mich 1, (1971), 190 NW2d 228, *cert den* 405 US 923; 92 S Ct 961; 30 L Ed 2d 794.

Therefore, it is my opinion that the county health board does have authority to retain and release employees and to be the negotiator of its collective bargaining agreements, which agreements are subject to the approval of the county commissioners.

2. Can the County Board of Health sign contracts [such as Medicare/Medicaid services] with third party payment services without commissioner approval?

Section 6 of the county and district health departments act, *supra*, is quoted above, in pertinent part, as to the powers and duties of the health board. Nothing in Section 6, or elsewhere in the Act grants the health board a general power to contract.

Therefore, it is my opinion that the board is not authorized to sign such contracts without the express authority of the county commissioners.

3. Can commissioners regulate fees and charges of persons employed by the Board of Health in executing health laws and their own regulations?

Section 6(3) of 1927 PA 306, *supra*, provides as follows:

"(3) The board of health may fix and require the payment of fees for sanitation services authorized or required to be performed by the health department. The board or boards of commissioners may revoke, enlarge or amend any such fees schedule. The fees charged shall not exceed the cost of performing the service by the department." MCLA 327.206; MSA 14.166

It is clear from the above that, while county boards of health initially determine a rate for fees to be charged, the board of county commissioners have the final determination because of their power to revoke, enlarge or amend the initial determination. The only restraint is that the fees shall not exceed the cost to the county health department of performing the service.

Therefore, my answer to your third question is in the affirmative. That is, a board of county commissioners may regulate fees and charges of persons employed by the county board of health in executing health laws and their own regulations.

FRANK J. KELLEY,
Attorney General.

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HIGHWAYS AND ROADS: Studded Tires

CONSTITUTIONAL LAW: Equal Protections; Classification

Geographical division of state for purposes of regulating studded tires is constitutionally permissible where such division is based upon extreme winter snow and ice conditions prevailing in different areas of the state.

Statutory exclusion of vehicles driven by law enforcement officers and rural postmen in the course of their official duties does not constitute a denial of equal protection.

There is no exclusion from the statute prohibiting use of studded tires in certain areas of the state for vehicles coming from another area where such tires are permitted.

Opinion No. 4815

Sept. 6, 1974.

Honorable John T. Bowman
State Senator
The Capitol
Lansing, Michigan 48902

You have requested my opinion on several questions relating to 1973 PA 138 which amends 1949 PA 300, §710; the Michigan Vehicle Code, MCLA 257.710; MSA 9.2410. 1973 PA 138 reads, in pertinent part, as follows:

“(a) A vehicle or special mobile equipment shall not be operated on the public highways of this state on metal or plastic track or on tires which are equipped with metal that comes in contact with the surface of the road or which have a partial contact of metal or plastic with the surface of the road, except as provided in subsections (c), (d) and (f).

* * *

“(c) A pneumatic tire may have embedded in it wire not to exceed .075 inches in diameter if so constructed that under no conditions shall the percent of metal in contact with the highway exceed 5% of the total tire area in contact with the roadway, except that during