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OFFICERS: Deputies

CITIES, HOME RULE: Officers

A deputy city treasurer whose office is provided for by the city charter may attend meetings of a police and fire pension board of the city and act in the place of the city treasurer.

Opinion No. 4913

January 21, 1976.

Honorable Joseph M. Snyder
State Senator
State Capitol
Lansing, Michigan 48902

Citing 1937 PA 345, § 1; MCLA 38.551; MSA 5.3375(1), you have asked:

“ . . . Can the Deputy City Treasurer serve in the same capacity on this Board as the City Treasurer? . . . ”

Your letter indicates that the “. . . City Treasurer handles a great deal of City business and is finding it increasingly difficult to devote the necessary time and effort toward the Pension Board,” and notes that, if the foregoing question is answered in the affirmative, the Board intends to request the Deputy City Treasurer to fill the position.

1937 PA 345, § 1, *supra*, provides in pertinent part:

“The retirement board, also referred to in this act as the pension board, created hereunder shall be known as ‘The retirement board’ and shall be a corporate body, consisting of 5 members, which shall consist of:

“(1) The treasurer of the city, village or municipality, so affected hereby.”

* * *

In addition to board membership, the treasurer is also the custodian of the funds, as provided by § 3:

“The treasurer of the city, village, or municipality shall be the custodian of all funds of the retirement system and shall be required to give a good and sufficient bond to said board for the faithful performance of his duties and the safe-keeping of all moneys collected hereunder, the bond to be paid by said city, village or municipality, and to issue warrants for the disbursements of such fund on the receipt of a voucher signed by at least 2 members of the board other than the said treasurer. No voucher or warrant shall be executed unless it shall have been previously authorized by resolution adopted by the board.”

The City of Center Line was incorporated as a home rule city in 1936, pursuant to 1909 PA 279, MCLA 117.1 *et seq*; MSA 5.2071 *et seq*. Section 3 of said Act provides in pertinent part, as a mandatory charter provision:

"Each city charter shall provide:

"(a) For the election of a mayor who shall be the chief executive officer of the city, and of a body vested with legislative power, and for the election or appointment of a clerk, a treasurer, . . . and such other officers as may be deemed necessary. . . ." MCLA 117.3; MSA 5.2073(a) [Emphasis supplied]

Section 4-j of said Act provides as a permissible charter provision:

"Each city may in its charter provide:

* * *

"(3) Municipal powers. For the exercise of all municipal powers in the management and control of municipal property and in the administration of the municipal government, whether such powers be expressly enumerated or not; for any act to advance the interests of the city, the good government and prosperity of the municipality and its inhabitants and through its regularly constituted authority to pass all laws and ordinances relating to its municipal concerns subject to the constitution and general laws of this state." MCLA 117.4j(3); MSA 5.2083(3)

As authorized by §§ 3 and 4j above, the Charter of the City of Center Line provides:

"The council shall appoint a . . . , treasurer, . . . , and may, by ordinance, create such additional offices as it may deem necessary in the operation of the city government. . . ." Chapter V, § 32

"The city treasurer shall collect all taxes, assessments, fees and other moneys payable to the city for any purpose whatsoever, and shall properly account therefor." Chapter V, § 34

"All appointive officers shall have power to appoint such number of deputies and assistants as may be determined by the council within budget appropriations, and shall exercise complete control over such deputies and assistants." Chapter V, § 38

The appointment of a deputy city treasurer is therefore authorized by the Home Rule Cities Act and the Charter of the City of Center Line. No limitation upon such an appointment is imposed by MCLA 117.5; MSA 5.2084.

The provisions of §§ 1 and 3 of the Firemen and Policemen Pensions Act, *supra*, are mandatory with respect to the responsibilities of the city treasurer. Also, § 38 of the City Charter, *supra*, requires that ". . . appointive officers shall exercise complete control over deputies and assistants."

In *Stewart v Royal Oak Twp Clerk*, 16 Mich App 434, 436; 168 NW2d 304 (1969), the court said:

"In *Kennedy v. Van Buren County Drain Commissioner* (1916), 189 Mich 676, 678, the Court set forth the powers of the deputy clerk as follows:

"The office of deputy clerk is one authorized by the statute (CL 1897, § 2342), and unless his powers are limited by the statute, he

may perform any act which his principal may perform. *Dorr v. Clark* (1859), 7 Mich 310; *Andres v. Ottawa Circuit Judge* (1889), 77 Mich 85 (6 LRA 238); *Tower v. Welker* (1892), 93 Mich 332; *Yale State Bank v. Fletcher* (1913), 173 Mich 585. It was doubtless well understood by the legislature that the township clerk could not always be at his office to serve the public in his official capacity, and by reason thereof, he was authorized to appoint a deputy clerk to act in his stead in order to expedite public business, *with no limitations on his powers to represent his principal*. In view of this we must hold that the deputy clerk was qualified to sit as a member of the township board * * *. (Emphasis supplied.)"

It is therefore my opinion that a deputy city treasurer may attend meetings of the Police and Fire Pension Board and act in his stead. However, the duties and responsibilities of the city treasurer may not be supplanted or substituted by those of his deputy; rather, ultimate responsibility remains with the city treasurer and his deputy acts as his agent in his absence.

FRANK J. KELLEY,
Attorney General.

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STATE OF MICHIGAN: Upper Peninsula

STATES: Process for Obtaining Statehood

UNITED STATES CONSTITUTION: Process for Obtaining Statehood

The procedure by which the Upper Peninsula became part of the State of Michigan was valid and constitutional.

The decision of Congress to include the Upper Peninsula within the boundaries of the State of Michigan is not subject to challenge.

A portion of an existing state of the Union may achieve separate statehood if:

1. The state legislature agrees to separation of a designated area.
2. Residents of the area consent to the separation.
3. Representatives of the area adopt a constitution and petition the United States Congress for admission.
4. The Congress, by majority vote, admits the new state into the Union.

Opinion No. 4911

January 22, 1976.

Hon. Robert W. Davis
State Senator
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Hon. Dominic J. Jacobetti
State Representative
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Collectively, you have requested my opinion on the following two questions:

- (1) "Were there any constitutional or legal deficiencies in the way in which the Upper Peninsula became a part of the State of Michigan?"