

7601 30.2

TOWNSHIPS: Firemen and policemen civil service

CIVIL SERVICE: Township firemen and policemen

FEDERAL AID: Comprehensive employment and training act

A township that has adopted civil service for its fire department may not employ a civilian as a full-time member of the township fire department who has not been hired through the civil service process.

Persons employed by a township pursuant to the provisions of the comprehensive employment and training act of 1973 may not displace employees currently employed by the township.

Opinion No. 4928

January 30, 1976.

Honorable Kirby Holmes
State Representative
The Capitol
Lansing, Michigan 48901

You have sought my opinion concerning the legality of a township employing a civilian to perform duties previously discharged by a member of a township fire department operated under the provisions of 1935 PA 78; MCLA 38.501 *et seq*; MSA 5.3361 *et seq*. From information in your letter and its enclosures, the question may be stated:

May a township employ a civilian who is not a member of the township fire department hired through the civil service process established by 1935 PA 78; MCLA 38.501 *et seq*; MSA 5.3361 *et seq*, to fill a position as a "fire department dispatcher", a function that had been performed by firemen?

1935 PA 78, *supra*, § 7 provides:

"On and after the date this act takes effect, appointments to and promotions in all paid fire and/or police departments of cities, villages or municipalities of any population whatsoever shall be made only according to qualifications and fitness to be ascertained by examinations, which shall be competitive, and no person shall be appointed, reinstated, promoted or discharged as a paid member of said departments regardless of rank or position, in any fire or police department of any city, village or municipality in the state of Michigan, in any manner or by any means other than those prescribed in this act."

This section has been interpreted and applied in a number of formal opinions of the Attorney General. In II OAG, 1958, No 3092, p 22 (January 22, 1958), advice was sought concerning the establishment in a city covered by the Act of the positions of chief of the police department and chief of the fire department which were to be outside the classified service. After quoting the foregoing section, the opinion stated:

"It is clear from this section that after the adoption of the provisions of Act 78, any new appointment or promotion of a member of the police or fire department of a city must be made in the manner prescribed by the act, 'regardless of rank or position.' . . ." [p 22]

The opinion went on to state that even though the position had never before existed,

“ . . . if such positions are created now or at any time in the future, they must be included under the civil service system of your municipality. . . .” [pp 22-23]

An attempt to appoint members of a regional shopping center police or internal security department as special police officers of a municipality was held to be invalid by OAG, 1963-1964, No 4008, p 26 (February 19, 1963). It was determined that 1935 PA 78, *supra*, could not be circumvented by the fact that the private officers were not paid by the city, since

“ . . . the legislature did not contemplate an evasion of the spirit of the act through the appointment of special policemen to exercise the full powers of arrest and authority of regular city policemen within certain areas of the city through the device of private employment. . . .” [p 28]

Two unpublished letter opinions have also dealt with a similar question. In a letter opinion to Representative Joyce Symons dated February 25, 1970, it was stated that a city could not create the position of “ordinance warden” to give policemen’s duties to an employee outside the provisions of 1935 PA 78. A letter opinion to Representative Warren Goemaere dated September 6, 1972 concluded that “reserve police officers” who usually served in a limited capacity without compensation “are included within the mechanism of the act”. [p 3]

In view of these decisions, it is my opinion that, if a new employee is to be charged with responsibilities essential to the operation of the fire department, that employee must be selected in accordance with 1935 PA 78, *supra*. No attempt to disguise the position by changing the job description can be used to evade the provisions of the act.

Information furnished with your letter suggests that the civilian employees whom the township proposes to hire to replace members of the fire department will be compensated with funds received from the federal government under the provisions of the Comprehensive Employment and Training Act of 1973, 29 USCA 801 *et seq.* This fact has no bearing on the question in that the civil service process established by 1935 PA 78, *supra*, cannot be circumvented regardless of the source of the funds to compensate the employees.

It should also be noted that the Comprehensive Employment and Training Act, *supra*, was not intended to displace present employees or to preempt current positions.

In the establishment of a program under the Act, an eligible unit of government is required by 29 USCA 845(c)(8) to provide:

“assurances that no funds received under this subchapter will be used to hire any person to fill a job opening created by the action of an employer in laying off or terminating the employment of any regular employee not supported under this subchapter in anticipation of filling the vacancy so created by hiring an employee to be supported under this subchapter;”

To similar effect is the provision of 29 USCA 848(a)(1)(B) that financial assistance under the Act "will not result in the displacement of currently employed workers (including partial displacement such as a reduction in the hours of non-overtime work or wages or employment benefits)".

Therefore, it is clear that the usual civil service process must be followed in filling positions with the township fire department even if funds under the Comprehensive Employment and Training Act are available to compensate civilian employees performing a similar function.

FRANK J. KELLEY,
Attorney General.

COUNTIES: Lease to tenant of county property for a period longer than commissioners' term

A county board of commissioners may lease a county-owned building determined to be excess to the needs of the county to a private individual for a period longer than the commissioners' terms of office.

Opinion No. 4938

January 30, 1976.

Hon. Dale E. Kildee
State Senator
Capitol Building
Lansing, Michigan

You have requested my opinion as to whether a board of commissioners may lease a county-owned building to a private individual for a period longer than the commissioners' terms of office.

Pursuant to 1851 PA 156, § 11; MCLA 46.11; MSA 5.331, county boards of commissioners are authorized to sell or lease county-owned real estate. In addition, there is specific statutory authority which permits a county to lease for a period of years, not exceeding 30 years, aeronautical facilities, or real property acquired or set apart for that purpose, provided that "the public [is] not deprived of its rightful, equal and uniform use thereof." 1945 PA 327, § 133; MCLA 259.133; MSA 10.233.

A lease being a contract, the general rule with respect to the power of county boards of commissioners to enter into contracts which extend beyond their term of office, is set forth in 56 Am Jur 2d, Municipal Corporations, § 154, pp 206-209, which provides:

" . . . Thus, where the contract involved relates to governmental or legislative functions of the [board], or involves a matter of discretion to be exercised by the [board] unless the statute conferring power to contract clearly authorizes the [board] to make a contract extending beyond its own term, no power of the [board] so to do exists, since the power conferred upon municipal [boards] to exercise legislative or governmental functions is conferred to be exercised as often as may be found needful or politic, and the [board] presently holding such powers is vested with no discretion to circumscribe or limit or diminish their efficiency, but must transmit them unimpaired to their