760423.1

CONSTITUTION OF MICHIGAN: Art 4, § 29

STATUTES: Amendment of local act

PARKS: Huron-Clinton Metropolitan Authority

A county may not withdraw from the Huron-Clinton Metropolitan Authority by vote of its board of county commissioners.

The legislature may by general or local act effect a change in the composition of the Huron-Clinton Metropolitan Authority. However, an act by which the legislature changes the composition of the Authority may not impair vested rights or the obligation of contracts of the Authority.

Legislation to amend the Huron-Clinton Metropolitan Authority act is local in character and may not become effective unless approved by two-thirds of the members elected to and serving in each house and by a majority of the electors voting thereon in the metropolitan district.

The legislature may by general act dissolve the Huron-Clinton Metropolitan Authority and transfer its assets, rights, powers, obligations and duties to an existing governmental unit or to a new governmental unit established by law.

Opinion No. 4994 April 23, 1976.

The Honorable Morris W. Hood
State Representative
The Capitol Building
Lansing, Michigan

By letter you have requested my advice concerning the following:

1. May a county named in the Huron-Clinton metropolitan authority act, 1939 PA 147; MCLA 119.51 withdraw from the Metropolitan Authority? If it is determined that a county may withdraw, would the decision to withdraw have to be made by a majority of the members of the board of commissioners of the county or would the electorate have to vote on the issue?

2. Can the Legislature enact a general law which would have the effect of changing the composition of the authority? If so,

(a) Describe in some detail the provisions of such a general law that would be necessary to accomplish this result;

(b) Advise as to whether the general law may be enacted by a majority of the members of each house of the Legislature or whether it is necessary to obtain the consent of the electorate within the counties that compose the authority.

In response to your first question, examination of 1939 PA 147; MCLA 119.51; MSA 5.2148(1) leads me to conclude that the act provides no method whereby the electors of any portion of the Huron-Clinton authority may withdraw from the corporation, either on a county-unit basis, or otherwise.

Neither can a county board of commissioners effect a withdrawal from

the authority, *either* by the exercise of its power to amend local acts *or* otherwise.

Const 1963, art 7, § 8 provides:

> "Boards of supervisors shall have legislative, administrative and such other powers and duties as provided by law."

1851 PA 156, § 11; MCLA 46.11(13); MSA 5.331(13) empowers the several boards of commissioners

> ". . . to amend any local act of the legislature in force in their county and referring to matters within the jurisdiction of such board of supervisors or touching local powers and duties of county officers, . . ."

However, to quote from an opinion of my predecessor, Stephen J. Roth, OAG 1949-1950, No. 1219, p 570, 571-572, (May 31, 1950):

> ". . . [I]f we assume that P.A. 1939, No. 147, is not a local act it is obvious that withdrawal of Wayne county from the metropolitan authority cannot be effected by any amendatory act of the Wayne county board of supervisors for that body is vested with no power to amend public or special acts of the legislature. If, on the other hand, we assume that the act is local—an assumption justified by the terms of the act and the cited opinion of the supreme court—it could not be amended by the Wayne county board of supervisors unless it could be said that it referred to 'matters within the jurisdiction of such board of supervisors' or touched upon 'the local powers and duties of county officers' within the meaning of C.L. 1948, §46.11(13).
>
> "As I view P.A. 1939, No. 147, although it is in force in Wayne county yet it does not refer to matters within the jurisdiction of the Wayne county board of supervisors or touch upon the powers and duties of county officers within the meaning of C.L. 1948, §46.11(13). Instead, it refers to matters within the jurisdiction of the five-county district, a part of the governing body of which is appointed by the chief executive of the state. It is true that incidentally the act does affect the powers and duties of county officials because it requires them to provide funds for the operation of the authority (C.L. 1948, §119.57), but these powers and duties pertain also to the five-county district and not local to Wayne county alone. Hence, they are not within the meaning of 'local powers and duties of county officers' as that phrase is used in C.L. 1948, §46.11(13) and will not warrant an amendment of P.A. 1939, No. 147, by the Wayne county board of supervisors."

In response to your second inquiry, the legislature may by general or local act effect a change in the composition of the authority.

Such act or acts, to be consistent with federal and state constitutions cannot however, impair vested rights or the obligation of contracts of the Huron-Clinton metropolitan authority, including but not limited to, bonds issued under § 8 of 1939 PA 147, *supra.* (US Const, art I, § 10, and am. XIV; Mich Const 1963, art 1, §§ 10 and 17.)

Such legislation, if attempting no more than an amendment of 1939 PA 147, would be local in character, and would not become effective until ap-

proved by a majority of the electors, voting thereon, within the metropolitan district.

Although 1939 PA 147; MCLA 119.51 *et seq;* MSA 5.2148(1) *et seq* is numbered as a public act, it is referred to in the body of the act itself as being a local act (1939 PA 147, § 10; MCLA 119.60; MSA 5.2148(10)), and the Supreme Court in *Huron-Clinton Metropolitan Authority* v *Boards of Supervisors,* 300 Mich 1, 14; NW2d 430, 434 (1942) concluded that the act was in fact, a local act.

The Const. of 1963, art 4, § 29 provides:

> "The legislature shall pass no local or special act in any case where a general act can be made applicable, and whether a general act can be made applicable shall be a judicial question. No local or special act shall take effect until approved by two-thirds of the members elected to and serving in each house and by a majority of the electors voting thereon in the district affected. Any act repealing local or special acts shall require only a majority of the members elected to and serving in each house and shall not require submission to the electors of such district."

Relying on the similar provisions of the Const 1908, art 5, § 30; *Common Council of Detroit* v *Engel,* 202 Mich 536; 168 NW 462 (1918) and, *Attorney General* v *Lindsay,* 221 Mich 533; 191 NW 826 (1923), Attorney General Stephen J. Roth concluded that:

> ". . . [L]egislation attempting no more than the amendment of PA 1939, No. 147, would itself be of a local character and could have no effectiveness or validity until approved by a majority of the electors voting thereon in the district to be affected." OAG 1949-50, No. 1219 p 560, 572 (May 31, 1950)

The requirement for a local referendum was apparently recognized by the legislature in 1972 in submitting to the local electors 1972 PA 145; MCLA 119.57; MSA 5.2148(7), an act proposing amendment of 1939 PA 147, *supra.*

Addressing the changes in the metropolitan authority, it is my understanding that you are interested in:

> (a) possible changes in county representation on governing boards of the authority; or
>
> (b) providing a mechanism by which a county might withdraw from the metropolitan district.

First, the legislature may by act amending 1939 PA 147:

> (a) change the county representation on the governing board of the authority; and
>
> (b) detach from the district any named county; or
>
> (c) enable the electorate of any county-member of the district to withdraw.

Such amendatory acts would as "local" legislation, be submitted to the electors of the entire five county area. Should a majority of the electors

approve the amendatory legislation, the amendments would become effective to the extent that they did not impair the obligation of district contracts or take property without due process of law.

Secondly, the legislature may by general act, without referendum, dissolve the district and transfer all of its assets, rights, powers, obligations and duties to an existing governmental unit or to a new governmental unit established by law.

To quote from OAG 1949-1950, *supra,* p 573:

> "[T]he legislature may provide for the alteration of its creature, the Huron-Clinton metropolitan authority. Although the following language was spoken with reference to a school district the principles announced are applicable to the case at hand:
>
> '* * * The State, consisting of its electors, has absolute political power, except as limited by the Federal Constitution. Until the electors have adopted a Constitution, there is no public corporation, either municipal or *quasi* municipal, that can resist the authority of the State, which has power to create both, and to destroy them, and to make governmental agencies of them. It is not necessary to discuss municipal corporations proper, because we are not dealing with one; so we may pass them with the suggestion that, under repeated decisions, they exist through the action or acquiescence of the State; are subject to regulation and control by the State, except as qualified by the provisions of the United States Constitution; and this has application to interests in the nature of private rights only, which such corporations have and enjoy.
>
> 'The *quasi* corporations are radically different. They consist of counties, townships, school districts, highway districts, etc. They are governmental agencies, and it is, to say the least, doubtful if they are in any respect anything else, or have any rights that can be called private. They perform many functions, but these are for and about the business and policies of the State, which has imposed upon them the responsibility and expense of maintaining highways, schools, drains, bridges, etc. This may be called a right or an obligation, according to the views of the citizen who is taxed locally for the several purposes; but, whatever it is called, it depends upon the constitution or law of the State, and otherwise would not exist. If upon the Constitution, the legislature has not the power to change it; but, if upon an act of the legislature, it is so subject to change. There is danger of confusing rights derived from these different sources, and it is possible to erroneously conclude that any apparent injustice in legislation is an invasion of local rights of self-government, and therefore invalid, when that can be truly said only of such as invade constitutional rights of self-government.
>
> '* * * The authority of the legislature to change the boundaries of counties, townships, and school districts does not necessarily involve the obligation to reimburse the portion deprived of the use of the public property. Frequently such laws contain provisions for the purpose, but it is not necessary. The property is public

property, held and used for the purposes of the State, which may, in the absence of constitutional prohibition, make such disposition of it as it sees fit. * * *'

"Whatever we may think of the justice of this act (and we cannot say that the situation was not fully known and discussed by the legislature), we cannot doubt the legislative authority to change these districts and provide for the disposal of their property and payment of their debts, as was done in this case.

"Attorney General v *Lowrey,* 131 Mich. 639, 643, 645, 647 (affirmed 199 U. S. 233 [550 L. ed. 167])."

As an example of such legislation, the legislature might adopt "An Act to create inter-county park and recreation districts and to define their powers and duties, and to repeal a certain act."

Such an act would, among other features, include provisions:

(a) Authorizing the boards of commissioners of any two or more counties, to incorporate an inter-county park and recreation authority comprising territory within the limits for the purpose of acquiring, owning, and operating either within or without their limits, parks and recreation areas.

(b) Establishing the number of members to serve upon an authority governing board and the means of electing or appointing members and apportioning board memberships between constituent counties.

(c) Establishing the Huron-Clinton Inter-County Park and Recreation District.

(d) Transferring all of the assets, real and personal property, all rights, powers, duties, liabilities, etc., of the Huron-Clinton metropolitan authority to said Huron-Clinton Inter-County Park and Recreation District.

(e) Repealing 1939 PA 147.

As an example of similar legislation, I refer you to 1967 PA 204; MCLA 124.401 *et seq;* MSA 5.3475(101) *et seq,* which, in addition to authorizing the establishment by two or more counties, of regional transportation authorities, establishes the Southeastern Michigan Transportation Authority consisting of the counties of Macomb, Monroe, Oakland, St. Clair, Washtenaw and Wayne.

FRANK J. KELLEY,
Attorney General.