

It is apparent that MCLA 28.103(3); MSA 3.333(3) is the only provision which allows a reemployed member to receive credit for prior service, consistent with the restrictions contained therein. Only if the employee had ten years of service, had not withdrawn accumulated contributions and had elected the deferred pension plan, would he receive credit for the total years of service.

Since the employee in question does not meet the qualifications outlined above, he may not receive credit for the six years of prior service at retirement. However, in light of the fact that the dismissal in this case was invalid, the trooper, at his option, may repay the contributions which were withdrawn, and receive credit for those years. If he does not choose to do so, he will accumulate only years of service from the time of reinstatement.

Your final question concerns the authority of the Director to charge interest which would have accrued to the fund if the withdrawal of contributions had not been made. An examination of 1935 PA 251, *supra*, indicates that there has been no authority delegated to the Director, as administrator of the fund, to charge interest when a former member wishes to repay contributions previously withdrawn. In the absence of a statutory provision allowing interest to be charged, the Director has no power to do so.

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CONSTITUTION OF MICHIGAN: Art 3, § 2.

PROBATE JUDGES: Authority to operate and staff a juvenile detention home.

Legislative authority granting a probate judge the power to operate and staff a juvenile detention home does not violate the doctrine of separation of powers embodied in Mich Const 1963, art 3, § 2.

Opinion No. 5084

August 5, 1976.

Honorable Mark Clodfelter
State Representative—81st District
The Capitol
Lansing, Michigan

You have requested my opinion on the following question:

“Does a statute which authorizes a county to establish a juvenile detention home as an agency of the probate court and which empowers the probate judge to appoint employees for such a detention home violate the separation of powers doctrine prescribed by section 2 of article 3 of the state constitution?”

The statute under consideration, 1939 PA 288, chap 12A, § 16; MCLA 712A.16; MSA 27.3178(598.16), provides in pertinent part:

“(2) Provision may be made by the board of supervisors in each

county or of counties contracting together for the diagnosis, treatment, care, training, and detention of children in a child care home to be conducted as an agency of the court or county, provided the home or facility meets licensing standards established by the state department of social services. The court or a court approved agency may arrange for the boarding of such children in private homes, subject to the supervision of the court, or may arrange with an incorporated institution or agency approved by the state department of social services to receive for care children within the jurisdiction of the court; or may use a room or ward, separate and apart from adult criminals, in the county jail in cases of children over 17 years of age within the jurisdiction of the court.

“(3) If a detention home is established as an agency of the court, the judge may appoint a superintendent or matron and other necessary employees for such home who shall receive such compensation as shall be provided by the board of supervisors of such county. . . .”

The constitutional provision referred to in your question, Const 1963, art 3, § 2, states:

“The powers of government are divided into three branches: legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution.”

In pertinent part, Const 1963, art 6, § 15, provides:

“. . . The jurisdiction, powers and duties of the probate court and of the judges thereof shall be provided by law. They shall have original jurisdiction in all cases of juvenile delinquents and dependents, except as otherwise provided by law.”

The subject of the authority of a probate judge to operate and staff a juvenile detention home was considered in *State, ex rel Anderson v St. Louis County*, 421 SW2d 249 (Mo, 1967), and the related case of *State, ex rel Weinstein v St. Louis County*, 451 SW2d 99 (Mo, 1970). In the latter case, the Court held that a provision of the Constitution of Missouri practically identical to Mich Const 1963, art 3, § 2, did not prevent the probate court from selecting and appointing employees to assist the Court in meeting its responsibility to care for children who came within the Court's jurisdiction.

Therefore, it may be concluded that the establishment and supervision of a juvenile detention home pursuant to legislation is an appropriate power of a probate court.

In *Wayne Circuit Judge v Wayne County*, 386 Mich 1; 190 NW2d 228 (1971), the Michigan Supreme Court adopted as the majority opinion of the Court the opinion originally endorsed as the minority opinion of Justices Defhmers and Black in *Wayne Circuit Judge v Wayne County*, 383 Mich 10; 172 NW2d 436 (1969). The Court cited *State ex rel Weinstein v St. Louis County, supra*, as well as *Noble County Council v State ex rel Fifer*, 234 Ind 172; 125 NE2d 709 (1955), and *Commonwealth ex rel Carroll v Tate*,

442 Pa 45; 274 A2d 193 (1971), and concluded that a court may employ administrative assistants, including specifically probation officers.

In summary, the statute authorizing the establishment of a juvenile detention home and empowering the probate judge to appoint employees of the home, 1939 PA 288, § 16, *supra*, does not violate Const 1963, art 3, § 2. The legislature may, if it wishes, however, divest the probate court of its administration over juvenile detention homes.

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COUNTIES: Contract to perform activities that are the proper concern of the county.

COUNTIES: Delegation of authority.

A county board of commissioners may contract with a private, nonprofit corporation to provide health or welfare services to persons who are the proper concern of the county pursuant to guidelines and where final authority to take discretionary action remains with the public body.

Opinion No. 5083

August 6, 1976.

Mr. Allison Green
State Treasurer
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Lansing, Michigan 48913

The expenditure of public funds by a county is the subject of two questions you have brought to my attention. Your first question notes that Ingham County has entered into contracts with five private organizations to provide various services to the people of the County. You then ask:

“May the County Board of Commissioners legally contract with a private non-profit corporation to provide health or welfare services at public expense where such contract permits the private corporation to determine eligibility for such services?”

The statute which forms the basis of your inquiry, MCLA 327.205; MSA 14.165, establishes the jurisdiction of a county health department:

“The county health department shall have jurisdiction throughout the county in both indigent and non-indigent cases; except that it shall not have jurisdiction in non-indigent cases in cities having an organized health department with full time health officer, except that such cities may elect to join with the county in the organization. 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.”

The language of this statute requires that the County Department of