

"(2) The results of the special census as certified in subsection (1) shall be utilized for the purpose of making distributions under section 14a starting on the July 1 next following the date of certification of the results. * * *" [Emphasis added] MCLA 141.907; MSA 5.3194(407)

This additional limitation means that the previously referenced fiscal year of experience would have to be completed subsequent to such July 1 next following the date of certification of the results of the special census.

I therefore conclude that a special census undertaken by a township pursuant to 1971 PA 140, § 7, *supra*, could only be utilized for making distributions of money to the township under 1971 PA 140, § 14a, MCLA 141.914a; MSA 5.3194(414a), starting on the July 1 next following the date of certification of the census. Further, borrowing in anticipation of the receipt of such revenues is limited to 50% of the total payments received by the township in the last preceding year.

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TOWNSHIPS: Adoption of consumer protection ordinance.

To protect consumers in the township, a charter township may adopt an ordinance establishing a consumer protection agency to license and regulate business.

Opinion No. 5102

September 9, 1976.

Honorable William Faust
State Senator
The Capitol
Lansing, Michigan 48901

You have asked for my opinion regarding the legality of a proposed consumer protection ordinance for Canton Township, a copy of which was furnished with your letter.

The ordinance proposes to establish a consumer protection agency authorized to license and regulate virtually every business in the township.

Const 1963, art 7, § 17 provides:

"Each organized township shall be a body corporate with powers and immunities provided by law."

1947 PA 359, MCLA 42.1 *et seq*; MSA 5.46(1) *et seq*, prescribes the powers and functions delegated to charter townships* by the legislature.

1947 PA 359, *supra*, § 15, provides:

"The township board of any charter township may enact such ordinances as may be deemed necessary to provide for the public peace and health and for the safety of persons and property therein, and may by

* Canton Township became a charter township in 1961.

ordinance prescribe the terms and conditions upon which licenses may be granted, suspended, or revoked; and may in such ordinances require an exact payment of such reasonable sums for any licenses as it may deem proper. The persons receiving the licenses shall, before the issuing thereof, execute a bond to the township when required by any ordinance in such sum and with such securities as prescribed by such ordinance, conditioned for the faithful observance of this act, and the ordinance under which the license is granted."

It is also necessary to consider 1947 PA 359, *supra*, § 17, which provides:

"Charter townships shall have and possess and may exercise the same powers and shall be subject to the same liabilities as are possessed by cities to regulate the construction of buildings for the preservation of public health and safety, to regulate the conduct of business, and to provide for the public peace and health and for the safety of persons and property." [Emphasis added]

The legislature has provided for two classifications of cities, the first being Home Rule Cities, 1909 PA 279, MCLA 117.1 *et seq*; MSA 5.2071 *et seq*; and the second being Fourth Class Cities, 1895 PA 215, MCLA 91.1 *et seq*; MSA 5.1740 *et seq*.

The Michigan Supreme Court has held that Home Rule Cities possess authority to regulate businesses within their boundaries in the interest of the public peace, health, morals and general welfare, so long as such regulation is exercised reasonably, and without discrimination. *Melconian v City of Grand Rapids*, 218 Mich 397; 188 NW 521 (1922).

Areas of municipal concern which are susceptible of regulation by cities of the fourth class are enumerated in 1895 PA 215, *supra*, § 1. The first 39 paragraphs of § 1 contains specific regulatory powers. The 40th paragraph, however, provides as follows:

"Ordinances. Fortieth, The council shall further have authority to enact all ordinances, and to make all such regulations, consistent with the laws and constitution of the state as they may deem necessary for the safety, order and good government of the city, and the general welfare of the inhabitants thereof; but no exclusive rights, privileges or permits shall be granted by the council to any person or persons, or to any corporation, for any purpose whatever."

It may be argued that the authority to regulate for purposes of "general welfare" as contained in the preceding statutory provision, is subject to the rule *ejusdem generis* which would restrict the enactment of such regulatory ordinances to persons or things of the same general kind or class as those enumerated in the first 39 paragraphs of § 1. However, paragraph 40 employs the phrase, "shall further have authority." The term "further" is defined in Black's Law Dictionary, (Revised Fourth Edition, pp 804-805):

"... generally when used as an adverb it is word of comparison, and means 'additional,' and is equivalent to 'moreover, or furthermore, something beyond what has been said or likewise, or also.'" [citations omitted].

Therefore, a fair construction of 1895 PA 215, § 1, is that in addition to the enumerated powers contained therein, a municipal corporation may also legislate on matters concerning the general welfare of its inhabitants. This construction would be consistent with Const 1963, art 7, § 34, which states:

"The provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor. Powers granted to counties and townships by this constitution and by law shall include those fairly implied and not prohibited by this constitution."

Furthermore, 1947 PA 359, *supra*, § 33, provides:

"The provisions of this act shall be liberally construed in the interest of the public health and welfare and the safety of persons and property within such townships as shall incorporate under the provisions of this act."

It is therefore, my opinion that charter townships have statutory authority to adopt consumer protection ordinances which would regulate business and require licensing of same within the township for the purpose of protecting the health, safety and general welfare of the township's citizens.

Several of the provisions of the ordinance deal with activities already covered by statute. This would not *per se* invalidate the ordinance, as municipalities are not divested of all control over areas where the legislature has enacted laws. *Miller v Fabius Township Board, St. Joseph County*, 366 Mich 250; 114 NW2d 205 (1962). However, it is a general rule that:

"... ordinances regulating subjects, matters and things upon which there is a general law of the state must be in harmony with that state law, and in any conflict between an ordinance and a statute the latter must prevail." 5 McQuillan, *Municipal Corporations*, (3d Ed), § 15.20, p 81.

Because the ordinance which you transmitted is in preliminary form and is subject to alteration or modification by the Canton Township Board of Trustees before its adoption, it would not be appropriate at this time to analyze the individual provisions to determine conformity with the rules previously stated. Such would be the responsibility of the township attorney, who should be consulted previous to enactment.

FRANK J. KELLEY,
Attorney General.