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CIVIL SERVICE COMMISSION: Firemen and fire departments.

CIVIL SERVICE COMMISSION: Police.

POLICE: Civil Service Commission.

FIREMEN AND FIRE DEPARTMENTS: Civil Service.

A civil service commission established by 1935 PA 78 may not grant payment for back pay to a person who served in a position that was underclassified.

A civil service commission established under 1935 PA 78 is not authorized to make determinations of the classification of policemen and firemen nor to determine the duties required of the rank of detective.

The primary role of a civil service commission established by 1935 PA 78 is to conduct examinations for employment and promotion and its other functions described in the Act.

Pursuant to Madison Heights City Charter, the city manager is the appointing officer for the purpose of 1935 PA 78.

Opinion No. 5018

December 17, 1976.

Honorable Bill S. Huffman
State Senator, 16th District
The Capitol
Lansing, Michigan 48902

You have asked for my opinion on several questions relative to the powers of the Madison Heights Civil Service Commission for policemen and firemen which operates under the powers established by 1935 PA 78, MCLA 38.501 *et seq.*; MSA 5.3351 *et seq.*

The situation out of which your questions arose may be summarized as follows: The duties of a juvenile officer for the Madison Heights Police Department are assigned to a police officer with the rank of patrolman. Contending that the juvenile officer performs "detective duties," a grievance was filed with the Civil Service Commission asking (a) that the position of juvenile officer be classified at the rank of detective; (b) that the Commission grant the individual retroactive pay.

You have asked for my opinion on five questions which I will answer individually.

"1. Does the Civil Service Commission have the authority to grant a man back pay; [i.e.] the difference between Detective and Patrolman pay?"

1935 PA 78, *supra*, in relevant part provides:

" . . . No member of any fire or police department within the terms of this act shall be removed, discharged, reduced in rank or pay, suspended or otherwise punished except for cause, and in no event until he shall have been furnished with a written statement of the charges and the reasons for such actions, . . . In every case of charges

having been made a copy of the statement of reasons therefor and answer thereto, if the person sought to be removed desires to file such written answer, shall be furnished to the civil service commission and entered upon its records. . . . If the person sought to be removed or reduced shall demand it, the civil service commission shall grant him a public hearing, . . . At such hearing the burden shall be upon the removing officer to justify his action. In the event that the removing officer fails to make charges to the satisfaction of a member or members of a fire or police department in a city, village or municipality, such member or members of a fire or police department may present the information to the civil service commission. *In event that the civil service commission fails to justify the action of the removing officer then the person sought to be removed shall be reinstated with full pay for the entire period during which he may have been prevented from performing his usual employment, . . .*" [Emphasis added.]

Although the above-quoted provision does provide for payment of back pay to persons unjustifiably removed from a position, I find no authority in the act for the Commission to grant back pay to a civil service employee who served in a position that was under-classified. Therefore the Commission lacks the authority to grant back pay in the situation described.

"2. Can the Civil Service Commission demand the Madison Heights City Council to appoint a man to the position the Commission feels is justified by flagrant violation of job classification, such as using a Patrolman to do Detective work?"

The real question here appears to be whether an Act 78 Civil Service Commission has the authority to classify and reclassify positions in a police or fire department. 2 OAG, 1957-1958, No 3292, p 306 (December 2, 1958) held that the determination of the "number, type and classification of positions" in a police department is not governed by the police and fire Civil Service Commission inasmuch as Act 78 is silent on these matters. At p 307 it is stated:

"The determination of the number, type and classification of positions in the police department is governed by the police and fire commission under the city charter and not the police and fire civil service commission, said Act 78 being silent on these matters. In the exercise of its powers the police and fire commission may establish a position or rank which includes more than one job classification. For example, the police and fire commission may create a *position* designated as 'patrolman' with duties of several types depending on assignment, such as walking a beat if assigned to the patrol division or checking parking violations if assigned to the traffic division. In such a situation it is not intended that the same individual perform these duties [sic] simultaneously. Consequently, though one officer walks a beat while another officer rides a motorcycle, each holds the *position* of 'patrolman.' Under these circumstances only one position should be recognized by the civil service commission and established on its eligible register. The civil service examinations presumably would test the qualifications of applicants giving due recognition to the fact that those accepted may

thereafter from time to time be selected individually from the register and assigned to jobs not having identical duties. Where positions are established in this manner, changes in duties due to transfer between job classifications do not involve changes in rank or position; hence no eligible register is involved. On the other hand, if the police and fire commission establishes separate positions for each job, viz., patrol officer or traffic officer with corresponding duties, then a transfer between jobs constitutes a change in position requiring use of the eligible register to establish qualification."

Under the Madison Heights City Charter, the determination of the number and type of classification is made by the Madison City Council and the Personnel Board pursuant to the "Merit System Ordinance" and the "Duties Classification Plan" called for by § 5.17 of the Madison Heights Charter. Persons are appointed to fill these positions (both initial employment and promotion) by the city manager who is the appointing officer under the Madison Heights Charter as explained in the answer to question 5, *infra*. The role of the Act 78 Civil Service Commission is to conduct examinations for employment and promotion and to assure that employment and promotion are carried out pursuant to the requirements of Act 78; it has no power to determine that the duties of the juvenile officer require the rank of detective.

"3. Can you define the Civil Service Commission's duties and responsibilities?"

The duties and responsibilities of the Madison Heights Civil Service Commission are defined by Chapter 18 of the Madison Heights Charter which incorporates Act 78 into the charter by reference. The provisions of Act 78 which describe the duties and responsibilities of the Civil Service Commission are easily obtainable and too lengthy to set forth in this letter. The duties of the Civil Service Commission are controlled by Act 78, and the type of city government has no impact upon the duties of the commission.

4. Your fourth question asks whether the duties of the Civil Service Commission "include tests, original appointments, promotions, and appeals on disciplinary actions."

The Civil Service Commission has at least these duties since Act 78 provides for tests (§§ 11, 12), original appointments (§§ 7, 11), promotions (§§ 7, 11) and appeals of disciplinary actions (§§ 13, 14).

"5. Who is the appointing Officer for the Police and Fire Departments under Act 78?"

Section 11(b) of Act 78 provides in its relevant part:

"... The term 'appointing officer' as used in this act shall be construed to mean the mayor or principal administrative or executive officer in any city, village or municipality."

The Madison Heights charter provides at § 3.8 that the city manager is "the chief administrative officer of the city government." The Charter also provides at § 3.6 that "all other employees [excepting the administra-

tive officers] of the city shall be appointed by the City Manager for an indefinite period." Thus, the City Manager is the appointing officer for the purpose of Act 78.

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Attorney General.

761217.2

SUMMER RESORT ASSOCIATIONS: Zoning.

SUMMER RESORT ASSOCIATIONS: Voting by proxy.

TOWNSHIPS: Zoning powers.

COUNTIES: Zoning powers.

ZONING AND PLANNING: Powers of counties and townships over summer resort associations.

A township may not exercise zoning powers over territory incorporated by a summer resort association.

A county may exercise zoning powers over territory incorporated by a summer resort association.

Members of a summer resort association may vote by proxy for membership on the board of trustees, for the adoption or amendment of by-laws, for establishment of dues and assessments and for authorization to sell or dispose of lands of the association.

Opinion No. 5065

December 17, 1976.

Honorable Edgar A. Geerlings
State Representative, 97th District
1280 Edinborough Drive
Muskegon, Michigan 49441

Citing 1929 PA 137, MCLA 455.201 *et seq*; MSA 21.751 *et seq*, the summer resort owners act, you have requested my opinion upon the following restated questions:

1. May a township exercise zoning powers over a corporation duly organized under 1929 PA 137?
2. May proxies be utilized for purposes of voting upon such issues as adopting or amending bylaws, establishing dues, or granting authority to sell, mortgage, give, grant, convey or lease lands owned by the corporation?
3. If the answer to question #2 is no, is voting by absentee ballot on such issues authorized at the annual or a special meeting of said corporation?

1929 PA 137, *supra*, § 1 authorizes summer resort owners to form a