

ration to assess annual dues and special assessments by a majority vote of the membership. 1929 PA 137, *supra*, § 5 authorizes the board of trustees to sell, mortgage, give, grant, convey and lease corporate lands when authorized by a majority vote of the members of the corporation voting thereon at an annual meeting or a special meeting called expressly for that purpose, by a general by-law adopted and recorded. No provision appears in any of these sections for voting by proxy, nor do they recite that voting shall be by a majority of members present.

The Business Corporation Act, 1972 PA 284, § 123; MCLA 450.1123; MSA 21.200(123), is expressly made applicable to summer resort associations; it provides in pertinent part:

“Unless otherwise provided in, or inconsistent with, the act under which such corporation is or has been formed, this act applied to . . . , summer resort association, . . .”

1972 PA 284, *supra*, § 421 provides for voting by proxy without limitation. See also 1972 PA 284, *supra*, § 611 regarding amendment of the articles of incorporation and 1972 PA 284, *supra*, § 753 regarding the transfer and disposition of corporate property, neither of which require that voting be by the members present. Therefore, it is my opinion that the membership of a summer resort corporation may vote by proxy for the adoption or amendment of by-laws, for the establishment of dues or assessments, and for the granting to the board of trustees of authority to sell or dispose of the lands owned by the association. There is no necessity to respond to your third question in view of the answer to question 2.

FRANK J. KELLEY,  
*Attorney General.*

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CONSTITUTION OF MICHIGAN: Article 11, § 5.

**CIVIL SERVICE:** Personal services performed by independent contractors.

The Department of Management and Budget may not, without prior approval from the Civil Service Commission, contract with an independent contractor to provide janitorial services to the state.

Opinion No. 5122

December 20, 1976.

Mr. Richard Ross  
State Personnel Director  
Department of Civil Service  
Lewis Cass Building  
Lansing, Michigan 48913

In recent years the Department of Management and Budget, and its predecessor, the Department of Administration, have entered into contractual agreements with various companies for the performance of janitorial services within certain State buildings.

Relative to such contracts, you have asked:

Is the Department of Management and Budget prohibited by Const 1963, art 11, § 5, from disbursing a payment voucher for services rendered pursuant to a janitorial services contract where such disbursement has not received prior approval from the Civil Service Commission?

I am further informed that there are approximately 1,150 classified State employees performing similar work in other State buildings and that personnel are available to perform the janitorial services currently being rendered by non-governmental employees.

The first paragraph of Const 1963, art 11, § 5, directs that the classified civil service shall consist of "all positions in the state service" with certain enumerated exceptions not pertinent to this inquiry.

The remaining paragraphs of Const 1963, art 11, § 5, relevant to this discussion state:

\* \* \*

"The commission shall classify all positions in the classified service according to their respective duties and responsibilities, fix rates of compensation for all classes of positions, *approve or disapprove disbursements for all personal services*, determine by competitive examination and performance exclusively on the basis of merit, efficiency and fitness the qualifications of all candidates for positions in the classified service, make rules and regulations covering all personnel transactions, and regulate all conditions of employment in the classified service.

\* \* \*

"*No payment for personal services shall be made or authorized until the provisions of this constitution pertaining to civil service have been compiled with in every particular.* Violation of any of the provisions hereof may be restrained or observance compelled by injunctive or mandamus proceedings brought by any citizen of the state." [Emphasis added]

Therefore, the response to your question depends upon whether the janitorial services performed by independent contractors may be characterized as "personal services" within the meaning of the constitutional provision.

The appellate courts of this state have not had occasion to rule on the precise meaning of the term "personal services" and an examination of the official minutes of the 1961 Constitutional Convention does not assist in an interpretation. However, the Comment of the Constitution delegates does reveal the general purpose of Const 1963, art 11, § 5, stating in pertinent part:

"This is a revision of section 22, article 6 of the present [1908] Constitution designed to continue Michigan's national leadership among states and public personnel practice, and to foster and encourage a career service in state government. . . ." [II Official Record, Constitutional Convention 1961, p 3404]

In *Stockburger v Riley*, 21 Cal App 2d 165; 68 P2d 741 (1937), the

California Supreme Court was confronted with a similar question. A maintenance company sought to compel the state to pay a claim for services rendered under a contract whereby the company had agreed to furnish labor and materials necessary to clean the windows of certain state buildings throughout the year. The California Controller refused to issue his payment warrant on the ground that the agreement was void in violation of the civil service provisions of the California Constitution. The Court upheld the decision of the controller, stating *inter alia*:

"... It is unreasonable that the same character of state service should be rendered by civil service employees in one part of the state, and be a subject of independent contract in another part of the state. If this agreement is valid there is nothing to prevent similar agreements from being made with relation to other janitor service, gardening, typing, and many other branches of service now accepted as subject to civil service. To sanction such an agreement would destroy the effectiveness of the enactment of the people in creating a Civil Service Act."

Therefore, it is my opinion that, without prior approval from the Civil Service Commission, the Department of Management and Budget is prohibited by Const 1963, art 11, § 5, from authorizing payment vouchers for services rendered pursuant to janitorial contracts where the personal services may practicably be performed by governmental employees in the classified service.

FRANK J. KELLEY,  
*Attorney General.*

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**PAROLE AND PROBATION:** Attendance of annual conference by probation officers.

A county has a duty to pay probation officers the actual and necessary expenses of attending the annual conference of probation officers.

Opinion No. 5091

December 21, 1976.

Hon. Alvin J. DeGrow  
State Senator  
Capitol Building  
Lansing, Michigan

You have requested my opinion as to whether a county has a duty to pay probation officers the necessary expenses of attending the annual conference of probation officers.

The legislature requires holding an annual conference of state probation officers to consider the subject of probation. Necessary expenses incurred by each attending probation officer should be paid by the county treasury. Reimbursement, moreover, by the county, pursuant to 1927 PA 175; MCLA 771.1 *et seq*; MSA 28.1131 *et seq*, is mandatory, not permissive. 1927 PA 175, § 24, *supra*, provides: