TO: Mayor and Members of Troy City Council
FROM: Lori Grigg Bluhm, City Attorney
DATE: May 18, 2005
SUBJECT: I-75 Ballot Question

Assignment

In resolution #2004-07-368, the Troy City Council "DIRECTS the City Attorney to RESEARCH and draft ballot language for the Long Lake/ Crooks Road/ I-75 Interchange Improvement project that will allow voters to provide input on this project for the next scheduled city regular election." The next regular City election is November 2005, which means that the Troy City Council should approve the ballot proposals on or before August 1, 2005. The Charter Revision Committee meeting is on June 20, 2005, and the recommendations of the Charter Revision Committee are expected to be forwarded to the Troy City Council at the July 11, 2005 City Council meeting.

Placement of Advisory Questions on the Ballot

In a letter dated September 13, 2004, Christopher M. Thomas, the Director of Elections for the State of Michigan, stated "please be advised that absent express legal sanction, a local unit of government in Michigan does not have the authority to call or expend public funds for an election for the purpose of submitting an advisory question to the electors of the jurisdiction." (Attached) Advisory ballot questions are defined in *Southeastern Michigan Fair Budget Coalition v. Killeen, 153* Mich. App. 370 (1986), as questions when the "passage by an affirmative vote of the electorate would not, per se, have the force of law or require action by the city council." (p. 378)

An advisory question cannot be submitted to the electorate without explicit constitutional or statutory or charter authority. (OAG No. 6411 (1986)) In spite of this unequivocal provision, advocates for advisory questions cite language from the *Killeen* case to support their argument. Specifically, they rely on the language where the Michigan Court of Appeals states: "advisory questions are not per se excluded from ballot in elections. " This statement should not be taken out of context, however, especially since the Court continues by recognizing and restating the undisputed legal requirement that there needs to be express authority to allow for advisory questions. In *Killeen*, this express legal authority was lacking, and the court stated that there is no authority for advisory questions under the current state law or under the constitutional provisions. Similarly, there was no express authority for advisory questions in the City of Detroit charter. The *Killeen* court then concluded that absent such express legal authority, advisory questions cannot be submitted to the electorate. Detroit was not permitted to include an advisory question on their ballot.

Just as in *Killeen*, there is no express authority under the constitution, Michigan statutes, or the Troy Charter that expressly allows Troy to submit advisory questions to the voters. Advisory questions cannot be submitted to the Troy voters at this time.

For future elections, Council may wish to submit a question about including this express authority for advisory questions into the Troy Charter. This could be done for the November 2005 ballot, and if passed, it would allow for advisory questions in future election cycles. Until such a charter amendment is adopted, however, there is no authority to submit advisory questions to the voters.

Initiative and Referendum Are Limited To The Scope of Powers of the City

According to the Home Rule Cities Act, MCL 117.4 (i) (g), municipalities are permitted to incorporate the power of "the initiative and referendum on all matters within the scope of the powers of that city" into their charter. As succinctly stated by Frank Kelley, "the authority of a governmental board to submit questions to its electors is also limited by its general powers. It lacks inherent power to expend funds for the purpose of submitting questions to its electors on matters not within its control or competence." (OAG No. 6143, (1983), quoting a letter opinion to Mr. Ken Dorman, dated October 13, 1975.)

In OAG No. 6411 (1986), Dickinson County unsuccessfully sought to include an advisory question on the ballot that would obtain input on whether a county hospital should be transferred to a private non-profit corporation. The Attorney General first held that there was no express authority for an advisory question. Second, the Attorney General found that the County did not have the authority to transfer a public hospital to a private non-profit corporation, and would have precluded the ballot question on that ground as well.

Similarly, in a letter to the Honorable Michael J. Griffin, dated April 12, 1985, Attorney General Frank Kelley stated "research reveals no authority in either Const. 1963 or in statute for a county board of commissioners to schedule an election on an advisory question dealing with (selling) unclaimed animals in the county animal shelter (to facilities outside of Michigan)." The state statute provided no authority for the county to do what was proposed in the ballot question.

In *Stolorow v. Pontiac*, 339 Mich. 199 (1954), an ordinance that would prohibit the City and officials from using public funds for the acquisition and development of parking facilities was void, since it prohibited both the present and also the future city officials from expending, disbursing, or committing funds for purposes that are expressly authorized by the Charter.

Ballot Questions Cannot Improperly Shift Administrative Decisions to the Electorate

According to *Scovill v. Ypsilanti*, 207 Mich. 288 (1919), "the city council may not place propositions on the ballot that shift to the electorate the responsibility for making decisions that they themselves are required to make." In *Scovill,* the Ypsilanti City Council wanted voter input before deciding how much money would be paid out of the general fund, and how much money would be levied against affected property owners for a paving project. In rejecting the ballot question, the Michigan Supreme Court stated:

The authority to order and direct paving and other improvements to the city's highways, and the power of taxation to raise fund for that and other municipal purposes rests in the city council. The council cannot by resort to a 'special election' under the statute referred to shirk that duty, delegate its authority and divest itself of or restrict its taxing power conferred by charter in the absence of some express provision to that effect.

This rule was further clarified in *West v. City of Portage*, 392 Mich. 458, 221 NW2d 303 (1974):

Another major limitation on initiative and referendum arises from the distinction drawn by the courts between administrative and legislative action. Only legislative action is subject to initiative and

referendum. This exception applies only to actions of local governments in which the administrative and legislative functions are combined in one body. The courts look to the substance of the matters passed by the governing units and not to the form in which they are passed. An 'ordinance' might be either legislative or administrative. (3 Stan. L. Rev. 497, as quoted in *West,* p. 464)

The rationale for limiting the power of initiative and referendum is found in *McKinley v. Fraser*, 366 Mich. 104 (1962), which was reconsidered by the *West* court:

The understandable objection to an unlimited power of local initiation is that such power can be employed to interfere with the necessary administration of municipal affairs and that it vests with the disgruntled or otherwise misguided minorities the power to impede the efficiency which is necessary to the due execution of local government.

Elliott v. Clawson, 21 Mich. App. 363 (1970) also addresses a rationale for limiting the power of initiation and referendum to legislative, as opposed to administrative matters. It states:

Government by representation is still the rule. Direct action by the people is the exception.... The statutory scheme specifically designed for amending city ordinances properly emphasizes the high level of expertise required for the efficient administration of such complex legislation.

According to the Michigan Attorney General:

Statutory powers specifically delegated by the Legislature to a municipal corporation or board of education may not be redelegated by that body to the electors." (OAG No. 4434 (1965-66, p. 258)

In *Rollingwood Homeowners Corp, Inc. v. City of Flint*, 386 Mich. 258, 191 NW2d 325 (1971), the Court found that the City's acquisition of property for a public housing project was advisory, and that there was no right to submit a question concerning the acquisition of property to the voters. According to *Rollingwood*, "There is nothing inherently legislative about a decision to acquire real estate."

Similarly, in *Wayne County Jail Inmates v. Wayne County Sheriff*, 391 Mich. 359; 216 NW2d 910 (1974), the Michigan Supreme Court determined that the decision about whether to provide jail facilities was an executive or administrative function of the County Board of Commissioners.

In *Beach v. Saline*, 412 Mich. 729 (1982), the Court expressly held that the purchase of property is an administrative act which is not subject to the right of referendum.

In *Green Oak Township v. Munzel*, 255 Mich. App. 235 (2003), the Michigan Court of Appeals recently held that there is no authority to challenge a consent judgment through the referendum process. Consent judgments are negotiated and approved by the local legislative body.

In *Citizens Lobby of Port Huron, MI v. Port Huron City Clerk*, 132 Mich. App. 412 (1984), the Court held:

The implementation by a home rule city of a general policy, program or plan by ordinance is an administrative act which is not subject to voter initiative or referendum... To permit the electorate to initiate piecemeal measures affecting land development is as inconceivable to us as allowing the

electorate to initiate ordinances affecting the fiscal affairs of the city without regard to the budget or to the overall fiscal program.

In 1979, Attorney General Frank Kelley concluded that the decision on whether or not to accept funds from the FAA for the purpose of expanding and improving a county airport was an administrative decision. There was no authority to defer that decision to the voters of Menominee County, and therefore "there is no justification for an advisory vote which would be a useless and empty act." (Letter to Donald W. Riegle, Dec. 4, 1979)

In OAG 6143 (1983), Attorney General Frank Kelley opined that a township board had no authority to place an advisory question regarding the levy of summer property taxes on its special election ballot. Kelley stated that the state statute "does not authorize either a school board or a township board to redelegate such determination to its electors."

According to OAG 6383 (1986), the City of Muskegon properly denied an initiative petition to revise the city retirement benefits ordinance, since the City determined that it was an administrative issue, rather than a legislative issue. According to the opinion, "court decisions have limited the application of initiatory procedures to proposed ordinances which are legislative rather than administrative." The opinion also provided some out of state cases as guidance for municipalities that are wrestling with the legislative vs. administrative issue. According to *Shapiro v. Essex County Board of Chose Freeholders*, 177 NJ Super 87 (1980), "In determining whether an act is administrative or legislative... Matters of a permanent or general character are considered legislative, while acts which are temporary or routine are considered to be administrative..." The Attorney General opinion also cites the "practicality test" from *Shriver v. Bench*, 6 Utah 2d 329:

It can readily be seen ... that analyzing the factors which should be taken into consideration in fixing salaries, together with other considerations which must be weighted in individual cases, presents a problem of such complexity that it is not practical for the public to give it sufficient time and attention to make a proper determination of the matter, and further, that the changes which are continually occurring make it highly desirable that there be some expeditious method of re-examining the situation at frequent intervals. This points to the conclusion that it is much simpler, easier, and comports more with reason and the practical exigencies of the operation of city government that the salaries be adjusted by the administrative procedure set up in the charter.

Through comparisons with the existing case law of Michigan and other jurisdictions, Council can determine what ballot questions would be administrative or executive, and would constitute an improper delegation of authority. Administrative or executive decisions should not be placed on the ballot.

Potential Ramifications of Placing An Improper Question on a Ballot

Some members of the public have erroneously urged City Council that there is no harm in placing an improper question on the ballot. Attorney General Frank Kelley had the opportunity to specifically refute this assertion in his April 12, 1985 letter to Michael J. Griffin, who asked, "What penalties, if any, apply if a county board of commissioners expends funds on an election on such an advisory question?" Kelley responded:

Since an election on such advisory question is not authorized by law, injunctive relief by a taxpayer is appropriate to restrain expenditure of public funds to hold an election on such an advisory question. *Mosier, Johnson v. Gibson,* 240 Mich. 515, 215 NW 333 (1927).

In the event that such a scheduled election were held and public moneys were expended therefore, the action taken to authorize the election and the expenditure of funds would be *ultra vires*. Public moneys paid out therefore may be recovered and mandamus will lie to compel a county board of commissioners to bring such an action. *Johnson, supra,* 240 Mich. at 523.

Based on this strong opinion, if an improper ballot question is placed on a ballot, then this could result in an injunctive lawsuit against the City, or in lawsuits against individual City Council members who acted outside the scope of their responsibilities (ultra vires activities). Our office could not represent any such individual, and the City would similarly not be responsible for any individual judgments if there is ultra vires activity. Placement of an improper question on a ballot may also constitute misconduct in office, which could result in potential criminal prosecution and/or removal from office by the Governor.

City of Troy Election Provisions

As long as the City doesn't run afoul of the previous provisions, Troy does have the ability to place legislative ballot proposals before the voters, as authorized by Chapter 5 of the Troy Charter (Legislation). As stated in Section 5.10, "An ORDINANCE may be initiated by petition, or a referendum on an enacted ORDINANCE may be had by petition, as hereafter provided." (Emphasis added).

Troy could also submit a proposed Charter amendment to the voters in the November 2005 election. Under state statute (the Home Rule Cities Act), Charter amendments can be submitted through the initiation process. (MCL 117.21) Another avenue for placing a Charter Amendment issue on the ballot is to have a 3/5 majority of the members of the Troy City Council approve placement of the proposed Charter Amendment Proposal for the ballot.

Some opponents of the I-75/ Crooks/ Long Lake interchange project have proposed a Charter Amendment that would elevate the current voting requirement for appropriating the local share of the cost of a road project. However, Section 5.6 (b) of the Troy Charter already sets forth the applicable voting requirements. It states:

The following actions shall require the affirmative vote of a majority of the members elect of the Council for the effectiveness thereof:

(1) Vacating, discontinuing or abolishing any highway, street, lane, alley or other public place or part thereof;
(2) Purchasing, selling or leasing of any real estate or interest therein;
(3) Authorizing the condemning of private property for public use;
(4) Creating or abolishing any office;
(5) Appropriating any money;
(6) Imposing any tax or assessment;
(7) Reconsidering or rescinding any vote of the Council

Under this section, only four votes are required for these actions. Absent a change to the City Charter, City Council cannot by impose a more stringent voting requirement than the City Charter. However, Council could submit a Charter Revision question to the voters in November 2005, which would ask whether the Charter should require five of the members elect to transact business. The potential impact to such a change should be carefully considered, however, since such a change may result in unintended negative consequences. For example, five votes would be required, even if there were a vacancy on City Council. In such a case, an amendment to the Charter could provide veto power to any one individual member of Council. Even without such a vacancy, a minority would wield unlimited authority.

If Council chooses to submit an amendment to the voting requirements of the Charter, this could be done for the November 2005 election, and would be effective immediately if approved by the voters.

It should also be noted that under the election laws, a City cannot use public funds in support of or in opposition to any ballot proposal. Private groups do not have such limitations placed on their advocacy of ballot proposals.

If you have any questions concerning the above, please let me know.

CC: City of Troy Charter Revision Committee

STATE OF MICHIGAN
TERRI LYNN LAND, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

September 13, 2004

Ms. Tonni L. Bartholomew, Clerk
City of Troy
500 West Big Beaver Road
Troy, MI 48084

Dear Ms. Bartholomew:

In response to your recent inquiry, please be advised that absent express legal sanction, a local unit of government in Michigan does not have the authority to call or expend public funds for an election for the purpose of submitting an advisory question to the electors of the jurisdiction. For your reference, I am enclosing several pertinent opinions issued by the Attorney General's office and a copy of an opinion rendered by the Court of Appeals in 1986 in a case related to two advisory questions attempted in Wayne County.

Please be further informed that Michigan election law does not extend an individual or group involved in circulating a petition the opportunity to alter, modify or change anything on the petition after the petition has been submitted to the filing official involved. As a consequence, it would be improper to allow a petition sponsor or any other person to alter, modify or change a petition after it has been filed.

Please do not hesitate to contact this office if we can be of any further assistance.

Sincerely,

Christopher M. Thomas
Director of Elections

STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

ELECTIONS: Authority of township board to schedule advisory ballot question

TOWNSHIPS: Authority of board to place advisory ballot question on levy and collection of summer school taxes

A township board has no authority to place on the ballot at a special election an advisory question pertaining to the levy and collection of summer property taxes for school purposes.

Opinion No. 6143 March 24, 1983

Honorable Gary M. Owen
State Representative
The Capitol
Lansing, Michigan

You have requested my opinion regarding the authority of the Ypsilanti Township Board to place an advisory ballot question on the ballot at a special election to be held on April 4, 1983.[1] The advisory question pertains to the levy and collection of summer property taxes for school purposes and is in the following form:

> "Shall all or part of the school taxes in Ypsilanti Township be due earlier in July of each year rather than in December of each year?"

The Board of Education of the Ypsilanti Public Schools, on January 17, 1983, adopted a resolution to impose a summer tax levy, pursuant to the School Code of 1976, 1976 PA 451; MCLA 380.1 et seq; MSA 15.4001 et seq, § 1613, as added by 1982 PA 333. Section 1613, in pertinent part, provides:

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[1] The township board has also placed on this special election ballot two questions regarding a property tax increase for township library purposes. The authority of the township board to submit these questions to the electors is not at issue.

"(1) By adoption of a resolution of its board before February 1, 1983, or before January 1 in any year thereafter, a school district or intermediate school district may determine to impose a summer property tax levy, which resolution by its terms may be applicable until revoked by the board of the school district or intermediate school district or for levies in any year specified therein. For each year such a resolution applies the school district or intermediate school district that has adopted the resolution shall request, before February 1, 1983 or before January 1 in any year thereafter, each city and township in which it is located to agree to collect the summer levy in that year of either the total or 1/2, as specified in the resolution, of the school property taxes. . . . Upon receipt of the request, the governing body of the city or township shall negotiate the reasonable expenses for collection of the school district's or intermediate school district's summer property tax levy that the city or township may bill under section 1611 or 1612. If a city or township and the school district or intermediate school district reach an agreement within 30 days of receipt of the district's request for the collection of the district's summer property tax levy, including an agreement to the amount of reasonable expenses that the city or township may bill under section 1611 or 1612, section 1611 shall govern the other terms of a city's agreement and section 1612 shall govern the other terms of a township's agreement.

"(2) If a city or township and the school district or intermediate school district fail to reach an agreement pursuant to subsection (1) for the collection of the summer property tax levy of a school district or intermediate school district subject to subsection (3), the school district or intermediate school district then may negotiate, until April 1, a proposed agreement with the county treasurer to collect its summer property tax levy against property located in that city or township. If a proposed agreement with the county treasurer has not been reached by April 1, the school district or intermediate school district may determine to serve as the property tax collecting unit and collect its own summer property tax levy against property in that city or township.

"(3) If, pursuant to subsection (2), the school district or intermediate school district has determined to collect its own summer property tax levy or has reached a proposed agreement with a county treasurer on the collection of its summer property tax levy against property located in a city or township with which an agreement to collect this levy could not be made pursuant to subsection (1), the school district shall notify by April 15 that city or township of the terms of the statement

> required by subsection (4)(b) and the city or township shall have 15 days in which to exercise an option to collect the school district's or intermediate school district's summer property tax levy pursuant to the terms of section 1611 or 1612."

Under 1976 PA 451, § 1613, supra, the decision whether to impose such summer tax levy is made by the board of education of the school district. The only decision to be made by the township board is whether to agree to collect the taxes on behalf of the school district. If the township board declines to collect the taxes, the board of education may then make timely alternate arrangements with the county treasurer for collection. The township board has no authority to prevent imposition or collection of the summer tax levy.

In the fact situation posed in your inquiry, the special election will be conducted on April 4, 1983. As of that date, the township board has no role in the decision to impose and collect taxes. Pursuant to 1976 PA 451, supra, § 1613(3), after April 1, 1983, its sole option is to collect the taxes at the cost determined by the school district or agreed to by the county treasurer. If the township board does not agree to do so, the taxes will be collected by the school district or county treasurer. The matter of collection of summer property taxes is, thus, clearly beyond the control of the township board.

Statutory powers specifically delegated by the Legislature to a municipal corporation or board of education may not be redelegated by that body to the electors. OAG, 1965-1966, No 4434, p 258 (May 2, 1966). Here, 1976 PA 451, supra, § 1613 grants specific power to a board of education to determine whether to impose a summer tax levy. 1976 PA 451, supra, does not authorize either a school board or a

township board to redelegate such determination to its electors. Thus, the township board lacks statutory authority to place the advisory question here at issue on the ballot. OAG, 1965-1966, No 4434, supra.

Moreover, the authority of a governmental board to submit questions to its electors is also limited by its general powers. It lacks inherent power to expend funds for the purpose of submitting questions to its electors on matters not within its control or competence. See, letter opinion to Mr. Ken Dorman, dated October 13, 1975.

It is my opinion, therefore, that the Ypsilanti Township Board has no authority to place on the ballot at the special election to be held on April 4, 1983, an advisory question pertaining to the collection of such summer property taxes for school purposes.

FRANK J. KELLEY
Attorney General

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL

STANLEY D. STEINBORN
Chief Assistant Attorney General

FRANK J. KELLEY
ATTORNEY GENERAL

LANSING
48913

DEC 04 1979

Honorable Donald W. Riegle, Jr.
United States Senator
Washington, D.C. 20510

Dear Senator Riegle:

You have indicated that the citizens of Menominee County are concerned regarding a vote by the county board of commissioners to accept funds from the Federal Aviation Administration for the purpose of expanding and improving the Twin County Airport and you have asked whether it would be permissible to have a referendum or an advisory vote on the matter.

With respect to the powers and duties of county governments, Const 1963, art 7, provides, inter alia:

> "Sec. 1. Each organized county shall be a body corporate with powers and immunities provided by law."*

Chapter VII of the Aeronautics Code, 1945 PA 327; MCLA 259.126 et seq; MSA 10.101 et seq, specifically provides for the acquisition of real and personal property by counties for the operation of airports. Significantly, this statute is silent regarding either approval of such action by the electors or the availability of a referendum.

OAG, 1961-1962, No 4021, p 362 (April 2, 1962), considered whether electors could take action to require the submission at an election of the various actions of a board

* Previously Const 1908, art 8, § 1.

of commissioners to acquire and construct an airport and concluded that the board could acquire property without a vote of the electors.

Instructive also is Rollingwood Homeowners Corp, Inc v City of Flint, 386 Mich 258, 268; 191 NW2d 325 (1971), which involved the acquisition of property for a housing project pursuant to a statute which was silent regarding the method of approval by the city. However, the city charter provided that such matters should be handled by resolution. The Court held:

> "It is clear that the acquisition of property for public use is done by resolution in the City of Flint. The size of the project is of no moment; it can acquire an airport or open an alley by resolution.
>
> "There is nothing inherently legislative about a decision to acquire real estate. The statutory approval having been rendered in the manner contemplated by the City Charter, we conclude that no referendum was available."

The history and application of initiative and referendum in this state was discussed at length in West v City of Portage, 392 Mich 458; 221 NW2d 303 (1974), which held that the right of referendum extended only to legislative acts and not to administrative or executive functions.

The statute provides that a political subdivision is ". . . authorized through its governing body to acquire property . . . ." 1945 PA 327, supra, § 126. The statute does not provide for submitting such action to the voters for approval or for a referendum.

In Wayne County Jail Inmates v Wayne County Sheriff, 391 Mich 359; 216 NW2d 910 (1974), the Supreme Court held that the power to provide jail facilities was an executive or administrative function of the County Board of Commissioners.

It is, therefore, my opinion that no right of referendum exists with respect to the action of the county board of commissioners in accepting funds for the expansion of the airport.

Research has revealed only one provision for an advisory vote in the statutes and decisions of this state.

1909 PA 279, § 18 as amended; MCLA 117.18; MSA 5.2097 provides for an advisory vote as to the desirability of changing the form of government for a city whose electors are contemplating a charter revision. No other authority for an advisory vote has been found. Thus, the issue to be squarely faced is whether the board of commissioners has authority to submit "advisory" issues to the electorate.

In Mosier v Wayne County Board of Auditors, 295 Mich 27, 29, 31; 294 NW 85 (1940), a case which dealt with the appropriation of county funds to conduct a survey throughout the state regarding apportionment and a taxpayer suit to halt the expenditure, the Court held:

> "A county is a municipal corporation and possesses only those powers which have been conferred upon it by the Constitution and the statutes. Attorney General v. Marr, 55 Mich. 445; McCurdy v. County of Shiawassee, 154 Mich. 550; Bloss v. Jackson County Supervisors, 170 Mich. 607 (Ann. Cas. 1914B, 1191); and Bond v. Cowan, 272 Mich. 296.
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> * * *
>
> ". . . Neither the Constitution nor legislative enactment gives authority to a county to expend public funds for the purpose of procuring reapportionment."

In Wright v Bartz, 339 Mich 55, 59; 62 NW2d 459 (1954), the Court was faced with an action brought to compel the county board of commissioners to hire a private appraiser to evaluate property within the county. In that case, the Court stated:

> "We find nothing in said section which either directly or by necessary implication authorizes a board of supervisors to employ an unofficial agency . . . to do the work of . . . the board of supervisors, . . ."

By analogy it would seem that the board of commissioners is prohibited from delegating certain of their duties as well as their decision-making responsibilities.

The Menominee County Board of Commissioners has acted and exercised its authority in a presumably proper fashion. Thus, there is no justification for an advisory vote which would be a useless and empty act.

Therefore, I am of the opinion that, absent any statutory power, the county board of commissioners is without authority to submit issues to voters for an advisory vote only.

Very truly yours,

FRANK J. KELLEY
Attorney General

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL

STANLEY D. STEINBORN
Chief Assistant Attorney General

FRANK J. KELLEY
ATTORNEY GENERAL

LANSING
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APR 12 1985

Honorable Michael J. Griffin
State Representative
The Capitol
Lansing, Michigan 48909

Dear Representative Griffin:

You have requested my opinion on several questions relating to the authority of a county board of commissioners to schedule an election on an advisory question dealing with unclaimed animals and to the sale of unclaimed animals to research facilities located outside the state.

Your first question is:

> May a county board of commissioners call an election on an advisory question related to unclaimed animals in the county animal shelter?

Const 1963, art 7, § 1 provides that each organized county shall be a body corporate "with powers and immunities provided by law."

It has been held that a county, as a municipal corporation, possesses delegated powers only which have been conferred upon it by the Constitution and by the statutes. Wright v Bartz, 339 Mich 55; 62 NW2d 458 (1954). In the absence of grant of authority by the Constitution or by statute, a county was barred from expending public money to procure reapportionment of the State Legislature. Mosier v Wayne County Bd of Auditors, 295 Mich 27; 294 NW 85 (1940).

Research reveals no authority in either Const 1963 or in statute for a county board of commissioners to schedule an election on an advisory question dealing with unclaimed animals in the county animal shelter.

In a letter opinion addressed to Mr. Ken Dorman, Staff Assistant to Representative D. J. Jacobetti, dated October 13, 1975, it was concluded that a county board of commissioners was without authority to call an election for the purpose of submitting an advisory question to the county electors and could not expend public funds for a special election therefor.

It is also noted that OAG, 1983-1984, No 6143, p 80 (March 24, 1983), concluded that a township board was without lawful authority to place on the ballot at a special election an advisory question pertaining to the collection of summer taxes for school purposes.

It is my opinion, therefore, that a county board of commissioners may not call an election on an advisory question related to unclaimed animals in the county animal shelter.

Your second question is:

> What penalties, if any, apply if a county board of commissioners expends funds on an election on such an advisory question?

Since an election on such an advisory question is not authorized by law, injunctive relief by a taxpayer is appropriate to restrain expenditure of public funds to hold an election on such an advisory question. Mosier, supra; Johnson v Gibson, 240 Mich 515; 215 NW 333 (1927).

In the event that such a scheduled election were held and public moneys were expended therefor, the action taken to authorize the election and expenditure of funds would be ultra vires. Public moneys paid out therefor may be recovered and mandamus will lie to compel a county board of commissioners to bring such an action. Johnson, supra, 240 Mich at 523.

It is my opinion in answer to your second question that a taxpayer may seek injunctive relief against a county board of commissioners to restrain the expenditure of public funds upon an advisory election. It is my further opinion that if public funds have been expended to hold an election on such an advisory question, mandamus will lie to compel the county board of commissioners to bring an action to recover moneys unlawfully paid to third persons for such purposes.

Your third question is:

> Is a county authorized to sell unclaimed dogs to research facilities located outside of Michigan for purposes of research?

MCL 287.389; MSA 12.580(29), provides:

> "Dogs and cats shall not be offered for sale or sold to a research facility at public auction or by weight; or purchased by a research facility at public auction or by weight. A research facility shall not purchase any dogs or cats except from a licensed dealer, public dog pound, humane society, or from a person who breeds or raises dogs or cats for sale. Any county, city, village or township operating a dog pound or animal shelter may sell for an amount not to exceed $10.00 per animal or otherwise dispose of unclaimed or unwanted dogs and cats to a Michigan research facility."

The term "research facility" has been defined by the Legislature to mean

> "any school, hospital, laboratory, institution, organization or person that uses or intends to use dogs or cats in research, tests or experiments, and that (1) purchases or transports such animals, or (2) receives any funds from the state or local government or any agency or instrumentality thereof to finance its operations by means of grants, loans or otherwise." MCL 287.381; MSA 12.580(21).

The authority of a county to sell unclaimed and unlicensed dogs in a county animal shelter to the University of Michigan was upheld in Youngblood v Jackson County, 28 Mich App 361; 184 NW2d 290 (1970), lv den, 384 Mich 810 (1971).

A plain reading of MCL 287.389; MSA 12.580(29), indicates that a county operating a dog pound or animal shelter is empowered to sell or otherwise dispose of unclaimed or unwanted dogs and cats to Michigan research facilities only. No authority is conferred upon the county to sell or dispose of such animals to research facilities in other states.

It is my opinion in answer to your third question that a county is not authorized to sell unclaimed dogs to research facilities located outside of Michigan.

Very truly yours,

FRANK J. KELLEY

Attorney General

SOUTHEASTERN MICHIGAN FAIR BUDGET COALITION v KILLEEN

Docket No. 81115. Submitted October 3, 1985, at Detroit. Decided July 21, 1986.

The Detroit City Council adopted a resolution entitled "Advisory Question Re: More Local Jobs Financed by Reductions in Military Spending," drafted by the Southeastern Michigan Fair Budget Coalition, and a resolution entitled "Advisory Question Re: U.S. Foreign Policy Toward Central America," drafted by the Michigan Interchurch Committee on Central American Human Rights (MICAH). Both resolutions were certified by the city clerk and transmitted to James Killeen, Wayne County Clerk, as Secretary of the Wayne County Board of Election Commissioners, for placement on the ballot for the general election of November 6, 1984. The Wayne County Election Commission refused to do so, holding that there was no constitutional or statutory authority for placing the resolutions on the state general election ballot. The Southeastern Michigan Fair Budget Coalition, MICAH, the Detroit City Council, the City of Detroit, and Mary Ann Mahaffey, a member of the Common Council for the City of Detroit, thereafter brought an action in the Wayne Circuit Court against James Killeen and the Wayne County Election Commission challenging the authority of the defendants to refuse to place a certified proposition on the ballot, and seeking appropriate relief to require both resolutions to be placed on the ballot. The circuit court, Thomas Roumell, J., ordered that plaintiffs' complaint for mandamus, injunctive relief and a declaratory judgment be dismissed. Plaintiffs appeal from that order. *Held:*

1. MCL 168.689; MSA 6.1689 is properly construed to require candidates, constitutional amendments, and questions for use at any state, district or county election to be "properly" certified before they were entitled to placement on the ballot. The use of the word "properly" evidences an intent of the Legislature that the board of county election commissioners not only determine that a proposed question is certified, but that it is indeed properly certified. Where it is apparent to the board of county election commissioners that the question is not entitled to placement on the ballot, it may refuse to place it thereon and leave the certifying body to its legal recourse. The Court of Appeals interpreted "properly" in this context to mean that the election commissioners are required to determine that, on its face, the question is entitled to placement on the ballot.

2. The Court of Appeals agreed with the circuit court that the questions involved are clearly "advisory" questions in areas with respect to which the city council has no power to act officially.

3. Absent transgressions of the duties set forth in the statutes or city charter, advisory questions are not per se excluded from the ballot.

4. The Legislature has the power, in the absence of a constitutional prohibition excluding such questions, to place advisory questions on the ballot and, therefore, to empower subordinate governmental entities to do so. The Legislature has neither specifically authorized advisory questions to be placed on ballots nor has it specifically authorized advisory questions to be placed on ballots by subordinate governmental units. A grant of such power to the Detroit City Council cannot be inferred from the Michigan Constitution, the provisions of the home rule cities act, or the Detroit City Charter.

5. While advisory questions as such are not necessarily excluded from ballots, in this case neither the Legislature nor the citizens of Detroit have conferred on the Detroit City Council the power to place these advisory questions on the ballot.

Affirmed.

1. ELECTIONS — BALLOTS — PREPARATION OF BALLOTS.

The statute regarding the preparation of election ballots by county election commissioners requires candidates, constitutional amendments, and questions for use at any state, district or county election to be "properly" certified before they are entitled to placement on the ballot; a board of county election commissioners may refuse to place a question on the ballot where it is apparent to the board that the question is not entitled to placement thereon; in this context, "properly" means that the election commissioners are required to deter-

REFERENCES

Am Jur 2d, Constitutional Law §§ 747 *et seq.*

Am Jur 2d, Elections §§ 204 *et seq.*, 328 *et seq.*

Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 126 *et seq.*

See the annotations in the ALR3d/4th Quick Index under Ballots; Elections.

mine that, on its face, the question is entitled to placement on the ballot (MCL 168.689; MSA 6.1689).

2. ELECTIONS — BALLOTS — ADVISORY QUESTIONS.

Advisory questions are not per se excluded from placement on election ballots; however, neither the Legislature nor the citizens of Detroit have conferred on the Detroit City Council the power to place on ballots advisory questions that deal with nothing over which the council has power to act.

3. CONSTITUTIONAL LAW — LEGISLATIVE POWER.

The Legislature can do anything which it is not prohibited from doing by the people through the federal and state constitutions.

4. ELECTIONS — LEGISLATIVE POWER — BALLOTS — ADVISORY QUESTIONS.

The Legislature has the power to place advisory questions on election ballots and to empower subordinate governmental entities to do so; however, the Legislature has not specifically authorized the placement of advisory questions on ballots nor has it specifically authorized subordinate governmental units to do so.

5. ELECTIONS — HOME RULE CITIES ACT — BALLOTS — ADVISORY QUESTIONS.

The home rule cities act does not grant the Detroit City Council the power to place on election ballots advisory questions that deal with nothing over which the council has power to act (MCL 117.3, 117.4i; MSA 5.2073, 5.2082).

Downs, Zagaroli & Downs, P.C. (by *Tom Downs*, Special Assistant Corporation Counsel, and *Roger F. Lane*), for plaintiffs.

John D. O'Hair, Corporation Counsel, and *W. B. McIntyre, Jr.*, Assistant Corporation Counsel, for defendants.

Before: D. E. HOLBROOK, JR., P.J., and R. B. BURNS and K. B. GLASER,* JJ.

K. B. GLASER, J. Plaintiffs appeal as of right from an order of the Wayne Circuit Court entered

* Circuit judge, sitting on the Court of Appeals by assignment.

October 1, 1984, dismissing their complaint for mandamus, injunctive relief, and declaratory judgment. We affirm.

On July 26, 1984, plaintiff Detroit City Council adopted a resolution entitled "Advisory Question Re: More Local Jobs Financed By Reductions In Military Spending."[1] This resolution was drafted

1

ADVISORY QUESTION RE: MORE LOCAL JOBS FINANCED BY REDUCTIONS IN MILITARY SPENDING

WHEREAS

Detroit is an economically depressed area, suffering from high unemployment, a severe housing shortage, a continuing crime problem and cutbacks in vital city services, and

WHEREAS

These and other problems can be related to a steady increase in military spending of our federal tax dollars, and

WHEREAS

The Reagan Administration has consistently over the last four years steadily increased the military budget and decreased funding for human services, and

WHEREAS

The amount of money which is currently expended for military purposes could be redirected to create more local jobs in the City of Detroit and the nation. NOW, THEREFORE BE IT

RESOLVED

That in order to obtain such an expression from the electors, an advisory question shall be submitted to the qualified electors of the City of Detroit at the General Election to be held in the City of Detroit, as provided by law, on Tuesday, November 6, 1984, the polls to be opened at seven o'clock in the morning and to continue open until eight o'clock in the evening Eastern Standard Time; and BE IT FURTHER

RESOLVED

That said advisory question be submitted to the qualified electors of

by plaintiff Southeastern Michigan Fair Budget Coalition. A second resolution was entitled "Advisory Question Re: U.S. Foreign Policy Toward Central America."[2] The latter resolution was

the City of Detroit and be printed upon the ballot in the following form:

DO YOU FAVOR REQUIRING THE FINANCE DEPARTMENT TO DO AN ANNUAL REPORT SHOWING HOW SIGNIFICANT REDUCTIONS IN MILITARY SPENDING, FINANCED BY OUR DETROIT PORTION OF FEDERAL TAXES, WOULD CREATE LOCAL JOBS AND JOB TRAINING PROGRAMS TO IMPROVE HEALTH, SOCIAL SERVICES, CRIME CONTROL, MENTAL HEALTH, HOUSING AND PUBLIC TRANSPORTATION FOR DETROITERS?

YES ____ NO ____

and BE IT FURTHER

RESOLVED

That before submission of said advisory question to the electors of the City of Detroit, to be voted on by them, the said advisory question shall be published in full together with the official proceedings of this Body at its regular session in at least one issue of the Detroit Legal News, the official newspaper of the City of Detroit, printed, published and circulated in said City; and BE IT FURTHER

RESOLVED

That the above advisory question in full shall be posted in a conspicuous place in each polling place; and BE IT FURTHER

RESOLVED

That the City Clerk is hereby authorized and directed to give such notice as is required by law of such special election and of the registration of electors entitled to participate therein.

2

ADVISORY QUESTION RE: U.S. FOREIGN POLICY TOWARD CENTRAL AMERICA

PEACE WITH JUSTICE IN CENTRAL AMERICA

WHEREAS,

The Michigan Interchurch Committee on Central American Human Rights (MICAH) has proposed an advisory ballot proposal regarding U.S. Foreign Policy toward Central America; and

WHEREAS,

This advisory question is endorsed by a number of prominent Detroit Church leaders from the Baptist, Catholic, Methodist, Episcopal and Lutheran Religious congregations, as well as labor and federal and state government representatives and others; and

WHEREAS,

This body being the Legislative Body of the City of Detroit, desires from the qualified electors of the City of Detroit an expression of whether or not they wish to send a message to the Reagan Administration voicing opposition to the Federal government's policy of military intervention in Central America. NOW THEREFORE BE IT

RESOLVED,

That in order to obtain such an expression from the electors, an advisory question shall be submitted to the qualified electors of the City of Detroit at the election to be held in the City of Detroit at the election to be held on Tuesday, the 6th day of November, 1984; and BE IT FURTHER

RESOLVED,

That said advisory question be submitted to the qualified electors of the City of Detroit and be printed upon the ballot in the following form:

SHALL THE FOLLOWING MESSAGE BE CONVEYED TO THE FEDERAL GOVERNMENT ON BEHALF OF THE CITIZENS OF DETROIT?

PEACE WITH JUSTICE IN CENTRAL AMERICA

WE, THE PEOPLE OF THE CITY OF DETROIT, CALL UPON OUR FEDERAL GOVERNMENT TO CEASE ALL FORMS OF MILITARY ASSISTANCE TO CENTRAL AMERICA AND TO REMOVE ALL OF OUR MILITARY PERSONNEL FROM THE REGION BECAUSE OF MASSIVE HUMAN RIGHTS VIOLATIONS, THE DANGER OF ANOTHER "VIETNAM" WAR, THE DAMAGE SUCH A MISUSE OF OUR TAX DOLLARS DOES TO OUR OWN ECONOMY, AND BECAUSE THE PEOPLE OF THE REGION HAVE A RIGHT TO DETERMINE THEIR OWN FUTURE.

YES( ) NO( )

and BE IT FURTHER

RESOLVED,

That before submission of said advisory question to the electors of the City of Detroit, to be voted on by them, the said advisory question shall be published in full together with the official proceedings of this

drafted by plaintiff Michigan Inter-Church Committee on Central American Human Rights (MICAH). Plaintiff city council adopted that resolution on August 1, 1984.

Both resolutions were certified by the city clerk and transmitted to defendant James Killeen, Wayne County Clerk, as Secretary of the Wayne County Board of Election Commissioners, for placement on the ballot for the general election of November 6, 1984. Pursuant to advice of counsel, defendant Wayne County Election Commission refused to do so, holding that there was no constitutional or statutory authority for placing the resolutions on the state general election ballot. This action was then brought, challenging the authority of defendants to refuse to place a certified proposition on the ballot, and seeking appropriate relief to require both resolutions to be placed on the ballot. The circuit court denied all relief in an opinion filed September 21, 1984.

The first issue is whether the Wayne County Election Commission has the power to refuse to place the resolutions on the ballot for the general election. As noted by the circuit court, plaintiffs contend that the provisions of the state election laws, and specifically MCL 168.646a(2); MSA 6.1646(1)(2), do not to any extent or degree grant

Body at its regular session in at least one issue of the Detroit Legal News, the official newspaper of the City of Detroit, printed, published and circulated in said City; and BE IT FURTHER

RESOLVED,

That the above advisory question in full shall be posted in a conspicuous place in each polling place; and BE IT FURTHER

RESOLVED,

That the City Clerk is hereby authorized and directed to give such notice as is required by law of such election and of the registration of electors entitled to participate therein.

any authority for evaluation by the county clerk as to the purpose, legality or object of any question certified to the clerk for inclusion in the printing of ballots for any general election. We hold that the relevant statute does give some power to the election commission beyond the mere form of the certification.

MCL 168.646a(2); MSA 6.1646(1)(2) is not directed at that issue. It is concerned with the timing of the certifications and the persons to whom the certifications are to be made. The preparation of the ballots is provided for by MCL 168.689; MSA 6.1689:

> The board of election commissioners of each county shall prepare the official ballots for use at any state, district or county election held therein, and shall have printed a sufficient number of ballots containing the names of all candidates *properly* certified to said board of election commissioners, and ballots for all proposed constitutional amendments or other questions to be submitted at such election to supply each election precinct in such county with a sufficient number for such precinct, and not less than 25% more than the total number of votes cast therein at the corresponding election held 4 years previous for the office which received the greatest number of votes. [Emphasis added.]

While the language of the statute is not entirely clear, we see no reason for the Legislature to distinguish between *candidates* who are to be "properly certified" and *constitutional amendments* or *other questions* which have to be so certified. We therefore construe the statute to require *candidates, constitutional amendments,* and *questions* for use at any state, district or county election to be "properly" certified before they are entitled to placement on the ballot. Since

this statute is directed to the board of election commissioners, the use of the word "properly" evidences an intent of the Legislature that the board of county election commissioners not only determine that a proposed question *is* certified, but that it is indeed "properly" certified. Accordingly, where it is apparent to the board of county election commissioners that the question is not entitled to placement on the ballot, it may refuse to place it thereon and leave the certifying body to its legal recourse. We interpret "properly" in this context to mean that the election commissioners are required to determine that, on its face, the question is entitled to placement on the ballot.

The second issue is whether the resolutions to be placed on the ballot would constitute submitting advisory questions to the voters. Plaintiffs contend that they are not advisory questions, and summarize their arguments succinctly in their brief:

> The City Council of Detroit has the right to implement its obligations under the balanced budget provision of the City Charter and the Declaration of Rights provision of the City Charter by having the voters vote directly as a means of supporting the City Council in its findings, which then would give the City Council additional "leverage" in any communications with members of the Legislative and Executive branches of the federal government.

We agree with the circuit court that the questions involved are clearly "advisory" questions, since their passage by an affirmative vote of the electorate would not, per se, have the force of law or require action by the city council.

Possibly more important, however, is that they are advisory questions in the areas of federal military intervention in Central American and

federal military spending, with respect to which the city council has no power to act officially. While the city council may petition the federal government in the matters of federal military spending and federal military intervention in Central America, it has no power to affect decisions in those areas beyond that of any other citizen or group of citizens. The questions are therefore advisory in the commonly accepted definition of that term.

Plaintiffs contend that to refuse to permit these resolutions to be placed on the ballot somehow deprives them of their right of petition. We know of no constitutional provision or case law holding that the right of petition includes the right to place anything *on the ballot* that a citizen or group of citizens might wish to say to their government.

Having determined that these resolutions propound advisory questions and, further, that such advisory questions deal with nothing over which the certifying authority has any power to act effectively, except as any other citizen might act, we turn to the question of how this affects the outcome of the case.

We find nothing in the constitution or statutes of the State of Michigan that specifically prohibits advisory questions. There *is* case precedent holding that the city council may not place propositions on the ballot that shift to the electorate the responsibility for making decisions that they themselves are required to make. See *Scovill v Ypsilanti*, 207 Mich 288; 174 NW 139 (1919). Absent such transgressions of the duties set forth in the statutes or city charter, this Court concludes that advisory questions are not per se excluded from the ballot.

Const 1963, art 4, § 1, vests the legislative power of the state in a senate and house of representa-

tives. The case law makes quite clear the broad nature of Michigan legislative power. The United States Constitution grants limited authority to the federal government to exercise only those powers that have been expressly or impliedly delegated to it. State constitutions, by contrast, serve as limitations on the otherwise plenary power of state governments. *Woodland v Michigan Citizens Lobby*, 423 Mich 188, 210; 378 NW2d 337 (1985). For example, the Legislature has general power to contract unless the constitution contains limitations. *Advisory Opinion on Constitutionality of 1976 PA 240*, 400 Mich 311, 317-318; 254 NW2d 544 (1977). See also *Huron-Clinton Metropolitan Authority v Boards of Supervisors of Five Counties*, 300 Mich 1, 12; 1 NW2d 430 (1942) (legislative power subject only to limitations of federal and state constitutions); *Attorney General v Preston*, 56 Mich 177, 179-181; 22 NW 261 (1885) (possibility of implied prohibitions or limitations on legislative power). The legislative power under the Michigan Constitution is as broad, comprehensive, absolute, and unlimited as that of England's Parliament, subject only to the United States Constitution and the restraints and limitations imposed by the people upon such power by the Michigan Constitution. *Young v Ann Arbor*, 267 Mich 241, 243; 255 NW 579 (1934).

We conclude that the Legislature can do anything which it is not prohibited from doing by the people through the federal and state constitutions. *Attorney General ex rel O'Hara v Montgomery*, 275 Mich 504, 538; 267 NW 550 (1936); *Woodland*, *supra*. We hold therefore that the Legislature has the power, in the absence of a constitutional prohibition excluding such questions, to place advisory questions on the ballot and, therefore, to empower subordinate governmental entities to do so.

The Legislature, however, has neither specifically authorized the placement of advisory questions on ballots nor has it specifically authorized advisory questions to be placed on ballots by subordinate governmental units. Accordingly, we must examine the constitution and statutes to determine whether such a grant of power to the Detroit City Council can be inferred therefrom.

It is apparent from Const 1963, art 7, § 22 that the constitution favors delegation of power to cities and villages. Consistent with that philosophy, Const 1963, art 7, § 34 provides the rule of construction with respect to grants of such power:

> 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.

There being no constitutional provision prohibiting advisory questions, the provisions of the home rule cities act, MCL 117.1 *et seq.*; MSA 5.2071 *et seq.*, must be interpreted liberally in favor of the city in determining whether the power to place advisory questions can be fairly inferred from the language used. We conclude that, under the present state of the statutes and the Detroit City Charter, the city has no such power.

The home rule cities act has two provisions relevant to this issue. Section 3 of the home rule cities act, MCL 117.3; MSA 5.2073, provides certain mandatory provisions to be contained within a city charter. With respect to elections, it provides:

> Each city charter shall provide the following:

* * *

(c) For the time, manner, and means of holding elections and the registration of electors.

Construing this liberally in favor of the city, it is entirely possible that the city charter *could* provide for advisory elections as a "means" of carrying out some of the powers given to the city council by statute and city charter. However, even by the most liberal construction, one could hardly conclude that the city council has been authorized by the Legislature to spend public funds in a straw vote in an area entirely outside the powers of the city council, as in this case.

Section 3 of the home rule cities act does not enlarge the *subject matter* on which the city council may exercise power. It only permits it to determine by what "means" it will exercise the powers otherwise granted to it. Therefore, if the city charter so provided, the city council might well decide that an advisory vote on something over which it has jurisdiction would be the proper means of exercising its power. These particular advisory questions, however, clearly fall outside the power of the Detroit City Council and, even if the city charter authorized advisory votes, there is no grant of power from the Legislature to place these particular advisory questions on the ballot. Furthermore, while the Detroit City Charter has complied with the mandate of providing for the time, manner and means of holding elections, it has not provided as one of those means the use of advisory questions on the ballot.

For these reasons, we find no grant of power in MCL 117.3; MSA 5.2073 that could possibly sustain plaintiffs' position that these advisory questions were entitled to ballot placement.

The second part of the home rule cities act

relevant to this issue is MCL 117.4i; MSA 5.2082, one of the sections that sets forth permissible charter provisions. That section provides in part:

Each city may in its charter provide:

* * *

(6) For the initiative and referendum on all matters within the scope of its powers and for the recall of all of its officials.

At the outset, it is apparent that this is specifically limited to matters within the "scope of its power." The city council, having no power with respect to the subject matter of these resolutions, could not under the most liberal interpretation find the power to place advisory questions on the ballot arising from this section.

Moreover, the words "initiative" and "referendum" have been construed by the Michigan Supreme Court:

In *West v Portage*, 392 Mich 458, 465-466; 221 NW2d 303 (1974), the lead opinion by Justice LEVIN concludes that a right of referendum authorized by the home-rule act extends only to legislative acts:

"We hold that the words 'initiative' and 'referendum' are themselves an implicit limitation on the matters that may properly be the subject of an initiative or referendum, and that the Legislature did not in 1909 intend to confer on the electors of home-rule cities the power to vote on questions not truly legislative in character."

The opinion was signed by three Justices, one Justice concurring in the result. In *Rollingwood Homeowners Corp, Inc v City of Flint*, 386 Mich 258, 268; 191 NW2d 325 (1971), the Court stated that "[t]here is nothing inherently legislative about a decision to acquire real estate." We are of the view that the opinion of Justice LEVIN in *West*,

supra, correctly and adequately treats the governing legal principle and adopt the reasoning and conclusion of Justice LEVIN in part I of *West.* [*Beach v City of Saline,* 412 Mich 729, 730-731; 316 NW2d 724 (1982).]

See also *Citizens Lobby of Port Huron, Michigan, Inc v Port Huron City Clerk,* 132 Mich App 412, 419; 347 NW2d 473 (1984), interpreting a city charter. These resolutions cannot qualify as being truly legislative in character under the most liberal construction and, therefore, are not entitled to be placed on the ballot under the right of initiative granted by MCL 117.4i; MSA 5.2082, the Michigan Constitution, or the Detroit City Charter.

We conclude therefore that, while advisory questions as such are not necessarily excluded from ballots, in this case neither the Legislature nor the citizens of Detroit have conferred on the Detroit City Council the power to place *these* advisory questions on the ballot.

Affirmed.

GUARANTEED CONSTRUCTION COMPANY v GOLD BOND PRODUCTS

Docket No. 81772. Submitted February 6, 1986, at Detroit. Decided July 21, 1986.

Plaintiff, Guaranteed Construction Company, contracted with the Ingham County Housing Commission to refurbish the Carriage Lane Apartments in Okemos. Plaintiff subcontracted parts of the project to Formation Plaster, Inc., including the installation of corner bead, a light gauge piece of metal usually coated with zinc that protects the outer corner of a wall and is used in association with dry wall. After the corner bead was installed, a dry wall joint compound or mud was smoothed over joints in the dry wall and around the corner bead to create the look of a plaster wall, which was then painted. Formation's superintendent thereafter discovered that the mud had crumbled and the corner bead underneath it had corroded extensively. As a result, plaintiff had to replace the corner bead and mud and repaint the affected apartment units. Plaintiff thereafter filed suit in the Oakland Circuit Court against Gold Bond Products, Dale Industries, Sharon Steel Corp., Westphalia Building Products, Triumph Metal Source, and Formation Plaster, Inc. Gold Bond manufactured and sold the dry wall joint compound to Westphalia, which supplied it to Formation. Sharon Steel and Triumph sold steel to Dale Industries, which in turn constructed and sold the corner bead to Formation. Plaintiff's complaint alleged: (1) defective product, (2) breach of express and implied warranty, (3) failure to warn, and (4) negligent design and manufacture. The circuit court, Robert C. Anderson, J., on defendants' motion, granted summary judgment in favor of defendants, ruling that there was no genuine issue as to any material fact and that defendants were entitled to judgment as a matter of law. Plaintiff appealed claiming error in the circuit

REFERENCES

Am Jur 2d, Constitutional Law §§ 747 *et seq.*

Am Jur 2d, Elections §§ 204 *et seq.*, 328 *et seq.*

Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 126 *et seq.*

See the annotations in the ALR3d/4th Quick Index under Ballots; Elections.