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THE COUNTY BOARD OF SUPERVISORS

ITS POWERS AND DUTIES

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THE COUNTY BOARD OF SUPERVISORS

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Foreword

Local government is largely uncharted territory, and there is an everlasting need for faithful guides. The man of action who devotes his time and energies to the service of his fellow citizens often finds himself perplexed by the lack of information which, concisely stated and easily accessible, might help him to discharge his duties in accordance with law and established practice.

Not only is the law of local governments uncodified in Michigan as in many other states, it is, in addition, often inconsistent, having grown by accretion over long periods of time. A mere reading of legal texts does not yield adequate information on the powers and duties of local governing bodies; frequently, it is necessary to discriminate between outdated (but not officially abrogated) legal norms and those others which practical reason has kept alive.

In examining and digesting hundreds of statutes, court decisions and opinions of the Attorney General, the Bureau of Social and Political Research has attempted to perform a service for those involved in county government. The greatest reward for our efforts will lie in the frequent use of, and the reliance placed in, this work. Beyond this, the volume contributes to our still so sorely lagging knowledge and understanding of local government.

We wish to express our gratitude to those who have helped in the completion of this manual. Mr. William Dennison, of the Michigan State Supervisors' Association, has been unsparing in his advice and council. Professor Robert H. Pealy, of the University of Michigan's Institute of Government, has given the manuscript a careful reading and offered many helpful suggestions. Mr. Franklin J. Rauner, Assistant Attorney General, has also read the manuscript and given detailed and constructive advice. Mr. Paul L. Adams, Attorney General of the State of Michigan, did not hesitate to make staff time available for a review of this manual. Mrs. Doris Brimmer, editor at the Bureau of Social and Political Research, and Mrs. Marjorie King, of the University editor's office, have given the manuscript their most careful attention and have seen it through its revisions to completion. While all of them are deserving of our gratitude, the responsibility for the content of the volume remains with the Bureau of Social and Political Research.

FRANK A. PINNER
Director

Preface

This manual classifies and describes briefly the powers and duties of county boards of supervisors in the state of Michigan. The main emphasis is on the functions of supervisors in their capacities as members of the county board, and their powers and duties as township or city officials are not treated. The latter were described in *The Michigan Township Board*, published by the Bureau of Social and Political Research (formerly the Governmental Research Bureau) of Michigan State University, during 1957. Furthermore, the present manual considers other operating offices and agencies of the county only in so far as the county board of supervisors is directly involved. The manual is intended for boards of supervisors generally and will only briefly mention the special arrangements which have been made for Wayne County. The focus is on summarization rather than specific details. Where a function is especially complicated or involves considerable detail, the matter is dealt with in general terms and the need of the supervisors to consult the relevant statutes—and perhaps to obtain the advice of attorneys and other specialists—is suggested.

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CHAPTER 1

Introduction

The Position of the County

The organization of Michigan on the basis of counties and townships began with the Northwest Ordinance of 1787, and the county-township system has subsequently been taken for granted. In the Constitutions of 1835 and 1850, the existence of counties was assumed and the express Constitutional provisions dealt mainly with how the counties and townships were to operate. The same is true of the present Constitution, which became effective in 1909. The legislative enactments likewise take the existence of the counties for granted. In fact, the state law expressly approves existing boundaries of counties, unless subsequently changed by the legislature, and the law also provides that all rights, powers, duties, privileges and immunities of the counties shall be valid until altered by law.¹

Furthermore, Section 2 of Article VIII of the present Constitution provides that no existing county shall be reduced, by the organization of new counties, to less than 15 townships, unless approved by a majority of the electors voting on the question in each county. (However, some counties were originally organized with less than 15 townships.) The Constitution also establishes a procedure by which a city of more than 100,000 population may become a separate county. There are statutes dealing with unorganized counties and with the division of counties but these are not considered pertinent for this manual.²

The county is the principal basis for apportioning membership in the state legislature. Several counties have more than one senator or representative and certain senatorial and representative districts embrace more than one county; however, apportionment and districting are primarily in terms of counties and a large number of senators and representatives are elected by single counties. Under the 1953 apportionment, when a county is entitled to more than one senator or representative, the board of supervisors determines the allocation within the county.³ The county is also the principal unit for determining the judicial circuits which consist of one or more counties.⁴

The county, unlike the state, has no inherent powers or rights as a unit of government. It has only those powers and rights granted

it by the Constitution and the statutes of the state. Moreover, in Michigan, the county has not been granted the degree of discretionary authority, in local matters, which has been delegated to home-rule municipalities.

The County as a Legal Entity

Section 1 of Article VIII of the present Constitution provides that each county shall be a body corporate, with such powers and immunities as shall be established by law, and that all suits and proceedings by or against a county are to be in its name. This provision has been implemented by state legislation which provides that each organized county shall be both a political and corporate entity for the purposes specified; these are: to sue and be sued; to purchase and hold real and personal estate for the use of the county; to borrow money for the purpose of erecting and repairing county buildings, and building bridges; to make all necessary contracts; and to perform all acts necessary to safeguard the county's property and to conduct its affairs.⁵ This provision may be considered procedural in character. It does not confer substantive power upon the county but instead gives the county legal and juridical personality and permits it to act, and be acted against, in its own name rather than in the name of officers, or in the name of other persons, or other legal entities.

History of County Government in Michigan

Although the organization of Michigan into counties and townships began with the Northwest Ordinance of 1787, the counties, during most of the time that Michigan was a territory, had no "popular institutions" and all officers were appointed. The principal officers were the county commissioners appointed by the governor. In 1827 an Act of the Legislative Council of the Territory provided that the governing body of the county should be a board of supervisors on which each township was to be represented. The board had control of all county business but could obligate the county to only a limited extent.⁶

The Constitution of 1835 provided for the election of a sheriff, a county treasurer, one or more coroners, a register of deeds and a county surveyor but did not deal with either county commissioners or with a county board of supervisors. However, in the revision of state laws in 1838, the supervisor system was replaced by the commissioner system, the commissioners being elected by the general vote of the county. In 1842 a law was passed abolishing the office of county commissioner and transferring its functions to a board

of supervisors. Special provisions were made for Wayne County in 1844. The principal change was the creation of a county board of auditors.⁷

The Constitution of 1850 is the source of much of the fundamental law relating to counties. In fact, 13 of the 15 sections of the present Constitution which deal expressly with counties were derived to some degree from the Constitution adopted in that year. The Constitution of 1850 contained several new sections dealing specifically with counties. Among other things, it provided for a board of supervisors, consisting of one member from each township, and such members from cities as the legislature may direct.⁸ The Constitution also authorized the legislature to confer upon the board of supervisors powers of a local, legislative and administrative character. In addition, the legislature, in 1851, passed an act on the Powers and Duties of Supervisors which, with subsequent amendments, is still the principal single source of authority for the board of supervisors.⁹

General Nature of the Powers and Duties of the Board of Supervisors

The board of supervisors is the principal governing body of the county. It is both a legislative and administrative body. The county generally has no chief executive, either elected or appointed, who might be compared with the governor of a state, or the mayor or manager of a city. Instead, it (the county) has several officials or boards elected by the people, and the state law has granted these officials and boards powers in particular fields. As a consequence, the powers of the county are distributed rather widely. Thus, authority of the board of supervisors is not limited to particular fields of activity but tends, in some degree, to touch virtually all phases of county activity.

However, the board of supervisors, like the county itself, has only the powers expressly granted to it. This fact has been emphasized several times by the Michigan Supreme Court which has ruled that the county board of supervisors has only such powers and immunities as are established by law and that the board may not exercise a power not vested in it by statute. For instance, the Supreme Court has held that the county board cannot expend funds in an effort to obtain reapportionment of the state legislature.¹⁰ Another case held that the supervisors cannot revise a ruling by the tax allocation board.¹¹

Thus, a study of the powers and duties of the board of supervisors is largely a study of the relevant provisions of the Constitution

and statutes of the state, as interpreted and applied by the Supreme Court and the Attorney General.

General Natures of the Relevant Statutes

There is a large number of state laws which bear upon the powers and duties of the county board of supervisors, but these laws differ considerably in their subject matter, in their length and complexity, and in the manner in which they concern the board of supervisors. Most of the relevant statutes do not deal exclusively with the board of supervisors or even the county. Rather, they relate generally to particular functions or subjects. For instance, the General Highway Law and the School Code deal with various matters and the provisions on the powers and duties of the board of supervisors are but one aspect of the statutes. Likewise, some laws, such as the Municipal Finance Act, deal with various units of local government of which the county is only one.

However, there are statutes which deal exclusively with the county, or even with only the county board of supervisors. The principal one is the Act on the Powers and Duties of Supervisors, mentioned previously. Even though it was first enacted in 1851 and has been modified many times, it still resembles the original statute in many ways.

The legislative acts outlining functions of the board of supervisors frequently treat the authorization of a task separately from the means of financing it. Moreover, the provisions relating to finance differ considerably. In some instances, the board is to appropriate from the general funds; in other cases it may impose a tax for the particular function, and in still others, the board is empowered to borrow funds for the purpose. In some instances, the board has a discretionary power to choose between different methods of meeting the costs of particular functions.

In many statutes, the county, along with other local governmental units, is given different special designations. For example, in the Municipal Finance Act, the county is included in the definition of "municipality"; in the Revenue Bond Act of 1933, it is referred to as a "public corporation," and in the Property Tax Rate Limitation Law, it is called a "local unit."

Notes to Chapter 1

1. MCL ss. 45.1, 45.2, MSA ss. 5.281, 5.282.
2. MCL ss. 45.19, 45.20, 45.31, MSA ss. 5.294, 5.295 and 5.311.
3. MCL ss. 4.601, 4.602, MSA ss. 2.27(1)(2).

4. MCL s. 602.1, MSA s. 27.131.
5. MCL s. 45.3, MSA s. 5.283.
6. *Attorney General v. The Board of Auditors of Wayne County*, 1888, 73 M 53, at 56, 57 40 NW 852.
7. *Ibid*, at p. 58.
8. Sections 6, 7, Article X, Constitution of 1850.
9. MCL ss. 46.1–46.32, MSA ss. 5.321–5.356.
10. *Mosier v. Wayne County Board of Auditors*, 1940, 295 M 27, 294 NW 85.
11. *Pittsfield School District v. Washtenaw County*, 1954, 341 M 388, 67 NW (2) 165.

CHAPTER 2

Organization

Composition of the Board

Under Section 7 of Article VIII of the Constitution, the board of supervisors consists of one supervisor from each organized township and such representatives of the cities situated within the county as may be provided for by law. The legislature has determined that the number of supervisors or representatives from each city is to be as follows:¹

<i>Population</i>		<i>Number of Supervisors</i>
Less than	750	1
751 to	3,000	2
3,001 to	4,000	3
4,001 to	9,000	4
9,001 to	25,000	5
25,001 to	35,000	6
35,001 to	49,000	7
49,001 to	65,000	8
65,001 to	80,000	10
80,001 to	100,000	12

For cities from 100,001 to 500,000 population, there is one additional representative for each additional 10,000 population or fraction thereof. There are also rules which affect only Detroit and Wayne County. In addition, there is a special rule relating to fourth class cities.²

In Michigan's 83 counties there are more than 1,200 supervisors. On January 1, 1958, there were 1,263 township supervisors and 830 board members representing cities. The average number per board was approximately 25, but the actual number ranged from 5 to more than 100. Only Wayne County has more than 100 supervisors, but four counties had more than 50 supervisors at that date.

None of the members of the county boards of supervisors in Michigan is elected by the county at large. Members are chosen by the townships or cities (or city wards) which they represent. A supervisor representing a township has powers and duties as a township official in addition to those as a member of the county board. The supervisors representing cities are selected in the manner set forth by law or in the respective city charters. In many instances, they also hold city offices, such as an assessor, controller, or city or ward councilman.³

The board of supervisors is organized on an annual basis, the officers and committees being named each year.

Duty to Entire County

The Michigan Supreme Court has ruled that the board of supervisors has a "fiduciary relationship" to the entire county. The statement was made in a case⁴ involving the lease of county property to the principal city within the county. The property had been leased to another party at \$3,000 per year, but the board of supervisors, instead of renewing the lease, as it could, leased the property to the city for \$501 per year. The action was approved by 27 of the 51 members of the board. The favorable votes were cast by the 24 supervisors representing the city and 3 supervisors from a suburban city. The remaining 24 members, all of whom voted against the action, represented the 24 townships of the county. The city said it intended to use the property as a drill field and fire tower for the fire department and as a store room for the police department. Some of the townships had contracted with the city for fire protection. However, court action was instituted to restrain the leasing of the property to the city. The trial judge denounced the transaction as a fraud upon the county. The Supreme Court affirmed his action, stating that the board had a duty to the entire county even though 80 per cent of the taxable property of the county lies in the city. The Court further pointed out that the division of votes indicated that the supervisors voting in favor of the action "were acting wholly in the interest of the city and not of the county at large." Moreover, it stated that even though there may be no wilful dishonesty in the transaction, it is "a constructive fraud on the rights of the taxpayers of the county." The Court deemed the transaction analogous to an action by a board of directors who by their vote evidenced their personal interest instead of that of the corporation.

Ineligibility of Supervisors to Transact Business with the County

The state law provides that no member of a county board of supervisors shall be interested directly or indirectly in any contract or other business transaction with the county, or any board, office or commission of the county, during the time for which he is elected or appointed and for one year after his term expires.⁵ The Attorney General has said that the language of this provision is "very inclusive, and admits of no apparent exceptions."⁶ In specific instances, the Attorney General has said that a supervisor may not have commercial dealings with the county, such as selling groceries to the county,⁷ furnishing mortuary and ambulance service to the county,⁸ or selling merchandise to a Bureau of Homeless and Unattached Men operated

by the county department of social welfare.⁹ These instances should be regarded as illustrative. Other types of transactions may also be prohibited.

Ineligibility of Supervisors for Other County Offices or Employment

The statutory provisions relating to the eligibility of a member of the board of supervisors for other county employment set forth a general rule, two methods of enforcement, a specific rule of application, and three exceptions.¹⁰ The general rule is that no member of the board of supervisors shall be eligible to receive, or shall receive, any appointment, or be employed in any capacity, by any officer, board, committee, or other authority of the county.

The enforcement provisions relate to two general matters. The first involves moneys paid, as salary, wages, or compensation, in connection with the appointment or employment. The statute provides that both the person making the appointment or employment and the person appointed or employed are liable for all such moneys. Moreover, if the appointment or employment is made by a committee or board, any member at the time of appointment or employment, is liable. The statute also provides that any taxpayer of the county may maintain any action for the recovery of any salary, wages, or compensation paid in connection with an appointment or employment contravening the statute. The prosecuting attorney, upon the request of a taxpayer, shall prosecute the action on behalf of the taxpayer. All moneys thus recovered are to be deposited in the county treasury to the credit of the general fund.

The other enforcement provision makes the violation a misdemeanor. The law states that any member of the board of supervisors accepting an appointment or employment in violation of the act, shall be deemed guilty of a misdemeanor and shall be fined by not more than \$100 or imprisoned in the county jail for not more than 90 days. Likewise, any officer or other official, or any member of a board or committee making any appointment or employment in violation of the act, shall be deemed guilty of a misdemeanor, and upon conviction, be subject to the same penalties.

The statute contains one specific rule of application, namely that no member of the county board of supervisors shall be employed in any capacity by the county road commission or the state highway department.

Three exceptions are set forth: (1) that the statute shall not limit or prohibit the right of any member of the board of supervisors from becoming a candidate for any elective office at a general or special

election; (2) that the act shall not limit or prohibit a board member from accepting from the board of supervisors any office or appointment for which no salary is paid for services, and (3) that the members of the board of supervisors may act on boards of determination or as special commissioners in connection with all drainage matters calling for such boards of determination.

There are several opinions by the Attorney General on the ineligibility of supervisors to other offices or other employment. These rulings relate to particular situations which have arisen, and supervisors may also be ineligible in other situations. The Attorney General has ruled that a supervisor may not be a director or administrator or other employee of the county health department, if the salary of the position is payable from funds appropriated by the board of supervisors.¹¹ Likewise, he may not also be a deputy sheriff or coroner receiving fees, or a state representative.¹² However, he may serve as trustee of a county tuberculosis sanatorium if the position holds no salary¹³ or he may serve as director of a county soil conservation district without compensation.¹⁴ The Supreme Court has held that a supervisor may be employed by the register of deeds for transcribing records. This work was deemed not incompatible with the duties as a supervisor.¹⁵

Certain rulings of the Attorney General have considered whether a supervisor may hold another office after resignation from his supervisorship. These rulings indicate that the appointment of a supervisor to another county office for which compensation is paid, is not effective, even after the supervisor resigned, if the appointment was made before he resigned,¹⁶ but that, once having resigned, he may properly be appointed to another position, such as the county road commission, if he is otherwise eligible.¹⁷

The Chairman

The chairman of the board is elected at the first meeting after the annual township meeting in each year. He is to preside at all meetings of the board throughout the year and if he is absent at any meeting, the members present shall select one of their number as temporary chairman. The chairman has power to administer an oath to any person concerning a matter submitted to the board or connected with the discharge of their duties. He may also issue subpoenas for witnesses and compel their attendance in the same manner as courts of law.¹⁸

The county clerk serves as the clerk of the board of supervisors.¹⁹ His duties in this matter will be described at various points in the succeeding chapters.

Committees

The state law expressly provides for only a few committees of the board of supervisors, such as the finance committee and the agricultural fair board. The finance committee, which will be discussed in succeeding sections, has specified powers and duties, provided it is established in conformity with the statutes. The Attorney General has held that a finance and budget committee which did not purport to be the statutory finance committee did not have the powers set forth in the statute and could act only in an advisory capacity.²⁰

Most boards of supervisors do have a sizeable number of committees to which particular matters are referred. In some instances, there is also a steering or executive committee, which assists in the management of the board's affairs. The committees, other than the finance committee, are essentially advisory and the state law does not prescribe their powers or duties or their method of operation. In general, their existence and operation does not reduce the legal responsibility of the board.

There is a general rule that the board of supervisors, like other public officials, can not delegate authority which involves the exercise of judgment and discretion.²¹ The board may refer matters to a committee for inquiry and report but not for the purpose of definitely and finally exercising the power possessed by the board itself.²² The board may also appoint a committee of agents to execute what it has determined to do,²³ and to carry out purely ministerial duties, such as the business details of executing a construction contract.²⁴ In one case, the Michigan Supreme Court held a board of supervisors responsible for the act of a committee, because the board had ratified what the committee had done, even though there was some doubt if the power to act could have been lawfully delegated to the committee.²⁵

If a committee includes persons other than members of the board of supervisors, the statutory provisions relating to compensation for attending committee meeting may not be applicable.²⁶ The matter of compensation will be discussed in the next chapter.

Finance Committee, Counties of Less than 75,000 Population

The board of supervisors, in any county having less than 500,000 population, has been authorized by state law to provide by resolution for the appointment of a finance committee of three to five members, which would audit claims, examine accounts, and perform other designated duties.²⁷ If such a resolution is adopted, the committee is to be appointed by the chairman of the board subject to ratifica-

tion by a majority of all members of the board of supervisors. Appointment takes place upon adoption of the resolution and at the first regular meeting in each year thereafter. The members of the finance committee hold office for one year. In event of a vacancy, the chairman of the board makes an appointment, to be confirmed at the next meeting of the board. In other respects, there are certain differences in the statutory provisions relating to counties of less than 75,000 population, and those relating to larger counties.

In counties having a population of less than 75,000 the membership of the finance committee must be drawn from the members of the board of supervisors.²⁸

The state law provides that in such a county, the finance committee has the power, and is authorized and directed:²⁹

(a) To audit all claims which are chargeable against the county, and no warrant shall be drawn for such claim, nor shall any such claim be paid until it has been audited by such finance committee, and payment thereof authorized by such finance committee.

(b) To examine the books and accounts of all county officers and departments unless otherwise provided by statute. In making such examination it may require the accounts and vouchers of such officer or department to be presented for examination and audit by the committee.

(c) To make a report to the board of supervisors in each year of all accounts audited and allowed by said committee, said report to be made at such time as shall be fixed by the board of supervisors.

(d) It shall also execute and perform all orders of the board of supervisors in any matter within the scope of this act, and not otherwise contrary to the laws of this state.

The law authorizing the finance committee states that the law does not contravene the statutory provisions on the duties of the board of supervisors relating to claims, (which will be discussed in Chapter 16) but that it is to be construed "as authorizing boards of supervisors to appoint a finance committee to audit, adjust, allow and authorize the payment of claims against such county and thereby expedite the duties of boards of supervisors relating to such claims."³⁰

Each member of the finance committee (in a county of less than 75,000) is to receive per diem compensation and mileage (or travel expense). The amounts are to be fixed by the board of supervisors, but are not to exceed the per diem and mileage paid members of

the board of supervisors for attending meetings of the board. However, the actual days served in any one year for which compensation may be received shall not exceed 20 days. This is in addition to fees for services as a member of the board of supervisors, but a member of the finance committee is not entitled to compensation and mileage for attending a meeting of the committee during a regular or special session of the board of supervisors.³¹

Finance Committee, Counties of 75,000 to 500,000 Population

The board of supervisors in a county having more than 75,000 but less than 500,000 population, may also provide by resolution for the appointment of a finance committee of three to five members. However, in such a county, the committee may include persons other than members of the board of supervisors. Appointment is by the chairman, with confirmation by a majority of the members of the board of supervisors. The term is for one year, and the annual appointments are made at the first regular meeting in each year.³²

The state law provides that the finance committee in such a county has the power and is authorized and directed:³³

- (a) To audit all claims which are chargeable against the county, and no warrants shall be drawn for such claim, nor the same be paid until it has been audited by the committee.
- (b) To examine the books and accounts and method of conducting all county offices and departments. In making such examination it may require the accounts and vouchers of any such officer or department to be presented, and after the examination, it shall report its findings to the board of supervisors.
- (c) To have the immediate charge and control of the court house and jail, and to provide for the maintenance of the same in an appropriate manner under such rules and regulations as the board of supervisors may establish.
- (d) All requests for finances or appropriations shall first be submitted to the committee and reported by it, with its recommendations, to the board of supervisors.
- (e) It shall have supervision and control of all automobiles, trucks or other motor vehicles owned by the county, except such as are owned or under the control of the county board of road commissioners.
- (f) It shall make a report to the board of supervisors, at the October session in each year, showing the number of employees in each office and department of the county, and make any recommendations it shall deem advisable, either increasing or

decreasing the number of officers and employees in each department, and the salary thereof. It shall recommend whether or not it is deemed advisable to consolidate any offices or departments, giving a complete list of the employees of the county and the salary of each, and its recommendations as to the number of employees and their salaries for each ensuing year.

(g) To prepare annually before the annual meeting of the board of supervisors in October, a detailed estimate of the necessary expenses of said county for the ensuing calendar year, together with an estimate of the probable receipts of the county from all sources other than taxation, and present the same at the October session of the board with the recommendations of the committee as to the amount of money necessary to be raised by taxation for the several purposes of the county expenditures.

(h) It shall also execute and perform all orders of the board of supervisors in any matter which is not contrary to the laws of the state.

Each member of such a committee, who is also a member of the board of supervisors, shall receive a per diem, fixed by the board of supervisors, but not to exceed \$1,000 per year, together with his necessary traveling and other expenses. This is in addition to fees for services as a member of the board of supervisors. A member of the finance committee who is not a member of the board of supervisors, shall receive \$1,000 as full compensation.³⁴

Supervisors' Intercounty Committee

The board of supervisors of two or more counties may, by resolution, establish an intercounty committee for the purpose of studying area governmental problems of mutual interest and concern and formulating recommendations on these problems to the boards of supervisors of the member counties involved. The mutual problems include such matters as studies on water facilities, drains, sewers and sewage disposal, roads, rubbish and garbage disposal, recreation, zoning, parks and posts.³⁵

The supervisors' intercounty committee may employ personnel to coordinate and conduct all types of surveys and studies relating to the mutual problems. The committee may also enter into agreements for surveys and studies to be conducted by other public or private agencies. Recommendations for submission to the county boards may be made by resolution of a majority of the full membership. The committee is required to make an annual report of its activities to the several county boards. In addition it may publicize and distribute reports on its objectives and findings.³⁶

The board of supervisors of the member counties may allocate amounts from their respective county funds to meet the expenses of the supervisors' intercounty committee. The proportion of total funds to be provided by each member county, shall be based upon a recommendation by the intercounty committee, or shall be provided for in the by-laws of the committee, approved by the boards of supervisors. The intercounty committee may accept from the member counties services of personnel, use of equipment, office space, and other necessary services, and these may be considered a part of the respective counties financial support. Gifts and grants may be accepted from the state government, local governments, private individuals, foundations or agencies, if made for furtherance of objectives of the committee.³⁷

Notes to Chapter 2

1. MCL 1948 s. 117.27, MSA 5.2106.
2. MCL 1948 s. 115.22, MSA 5.2061.
3. MCL ss. 41.60—41.64a, MSA ss. 5.51—5.56 (township officers; MCL ss. 87.26, 87.27, MSA ss. 5.1683, 5.1684 (ward supervisors); MCL ss. 115.22, 117.27, MSA ss. 5.2061, 5.2106 (representation of cities).
4. *Myers v. Post*, 1931, 256 M 156, 239 NW 315.
5. MCL s. 46.30(d)(4), MSA 5.353.
6. *Op. Atty. Gen.* 1943-44, pp. 309-11, at 310. March 5, 1943, No. 0-515.
7. *Op. Atty. Gen.* 1939-40, p. 351. December 13, 1939.
8. *Op. Atty. Gen.* 1941-42, p. 580. April 17, 1942, No. 23,410.
9. *Op. Atty. Gen.* 1941-42, pp. 66-67. February 17, 1941, No. 18,865.
10. MCL s. 46.30a, MSA 5.353(1).
11. *Op. Atty. Gen.* 1957, Vol. I, pp. 226-27. May 1, 1957, No. 2982.
12. *Ops. Atty. Gen.* 1951-52, pp. 200-2, March 15, 1951, No. 1374; 1955-56, Vol. II, pp. 703-5. November 30, 1956, No. 2756.
13. *Op. Atty. Gen.* 1943-44, p. 119. October 7, 1942, No. 24712.
14. *Op. Atty. Gen.* 1945-46, pp. 723-4. June 4, 1946, No. 0-4722. (Opinion refers to statutory prohibition of business transactions with the county).
15. *Hanna v. Chalker*, 1904, 136 M 8, 98 NW 732.
16. *Op. Atty. Gen.* 1943-44, p. 150. November 9, 1942, No. 24905.
17. *Op. Atty. Gen.* 1952-54, pp. 330-1. April 27, 1954, No. 1773, 1945-46, pp. 591-2. January 24, 1946, No. 0-4320.
18. MCL s. 46.3, MSA s. 5.323.
19. MCL s. 46.4, MSA s. 5.324.
20. *Op. Atty. Gen.* 1957, Vol. I, pp. 279-80. June 10, 1957, No. 2922.
21. *Cass County v. Gibson* 1901, 107 Fed. 363, at 369; *Maxwell v. Bay City Bridge Co.*, 1879, 41 M 453, at 465.
22. *People v. St. Clair*, 1866, 15 M 85, at 92, 93.
23. *Plummer v. Kennedy*, 1888, 72 M 295, at 300, 40 NW 467.

24. *Cass County v. Gibson*, 1901, 107 Fed. 363, at 369.
25. *Raymond v. McKenna*, 1907, 147 M 35, 110 NW 121.
26. *Op. Atty. Gen.* 1952-54, pp. 168-9. June 4, 1953, No. 1647.
27. MCL ss. 46.51, 46.61; MSA ss. 5.574(1), 5.571.
28. MCL s. 46.51, MSA s. 5.574(1).
29. MCL s. 46.53, MSA s. 5.574(3).
30. MCL s. 46.54, MSA s. 5.574(4).
31. MCL s. 46.52, MSA s. 5.574(2).
32. MCL s. 46.61, MSA s. 5.571.
33. MCL s. 46.63, MSA s. 5.573.
34. MCL s. 46.62, MSA s. 5.572.
35. MCL s. 123.641, MSA s. 5.400(1).
36. MCL s. 123.642, MSA s. 5.400(2).
37. MCL s. 123.643-4-5, MSA s. 5.400(3), (4), (5).

CHAPTER 3

Meetings

The Annual Meeting

The statute requires that an annual meeting of the boards of supervisors be held on the second Monday of October each year. However, in counties having a population of 70,000 or over, the board may change the time of the annual meeting to the third Monday in September. The Attorney General has ruled that the board of supervisors may not change the date of the annual meeting except as specified above.¹ The Attorney General has also ruled that decisions which, under the statute, must be taken at the annual October meeting can still be validly made at a later time (such as December), provided that the annual meeting has been formally adjourned to that time.²

The annual meeting is to be held at the courthouse if there is one; otherwise it is to be held at some place at the county seat. If no county seat has been established, the county clerk may designate a meeting place within the county. The clerk is to give three weeks notice of such a meeting by publication in one or more newspapers printed and circulating in the county. If no newspaper is published in the county, then the notice is to appear in the newspaper with largest circulation in the county. Only one legal newspaper rate is allowable for printing the notice.³

Other Regular Meetings

The statute provides that a regular meeting of the board of supervisors in each county may be held on the Tuesday following the second Monday in April of each year at the usual meeting place. Likewise, the law states that the June session of the board of supervisors shall be a regular meeting for the transaction of business. But there may be regular meetings at other times even though they are not mentioned in the statutes. The Supreme Court has said that the enumeration of meetings in the statute represents a minimum rather than a maximum.⁴ In fact, the common practice is to hold at least quarterly meetings, in January, April, June and October, and many boards have found monthly meetings desirable to keep members informed of county business. Regardless of the number of sessions, the statute requires that the board meetings be open to the public.⁵

Special Meetings

A board of supervisors may avoid the problem of calling a special meeting by adjourning its regular meetings subject to the call of the chairman. The statute requires that a special meeting can be called only when at least one-third of the supervisors of the county request it. The request must be in writing, addressed to the county clerk and must specify the time and place of such meeting. Once he has received the request, the clerk must give notice in writing to each supervisor. He may do this in person, or by leaving the notice at the residence of the supervisor, or by sending a copy of the notice to his postoffice address, by registered mail.⁶

The Conduct of Meetings

The legislature has authorized the county board of supervisors to establish procedural regulations concerning matters brought before the board unless otherwise provided by law.⁷

The Supreme Court stated in one opinion that, unless the legislature specifies the form a regulation must take, the act is just as valid when accomplished by resolution as by ordinance.⁸

The Attorney General has held that the board, when investigating a matter within its authority, may, through its chairman, subpoena witnesses and may also use subpoenas to compel the production of pertinent records.⁹ However, if a witness fails to answer a subpoena, a court would probably have to decide whether any action should be taken against the person. An opinion of the Supreme Court during 1881 held that, while the board of supervisors may subpoena witnesses, it could not commit them for contempt.¹⁰

Quorum and Voting Requirements

A majority of the supervisors of a board constitutes a quorum for the transaction of ordinary business, but this rule is indirectly qualified by other statutory provisions which require that certain matters be adopted by a majority of the members elected to the board and by still other provisions which require a two-thirds vote for adoption.¹¹ Many statutes require approval by a majority of the "members elect" and this would seem to mean a majority of the members who have been elected or appointed.

The general rule on voting is that all questions shall be determined by the votes of a majority of the supervisors present. There are, however, several exceptions to this general rule: the final passage or adoption of any measure or resolution and the allowance of any claim against the county require that a majority of the members

elected must vote for passage. This provision was interpreted by the Supreme Court in a case involving appropriations for construction of a county road. The Court held that proceedings to raise funds for highway construction were not invalid, although certain resolutions relating to the appropriations were passed by less than a majority of the elected members. The issue before the Court was the adoption by a majority of the elected members of a committee report setting forth the appropriation.¹² In another case, the Supreme Court ruled that where a report on equalized assessed values was first adopted by less than a majority of the members elected—and later affirmed in a resolution by a majority of elected members—the second action was, in fact, a reconsideration, and the readoption made the equalization valid.¹³

The situations in which a two-thirds vote of the members of the board of supervisors is required for adoption will be mentioned in the succeeding chapters in the discussion of the particular matters to which the requirement relates.

Records of Meetings; Duties of County Clerk

The state law provides that every official order, resolution and determination of a board of supervisors must be recorded and signed by the chairman and clerk.¹⁴

The county clerk is required by state law to act as clerk of the board of supervisors. In his absence his deputy shall serve.¹⁵ The statute outlines the following duties for the county clerk in this matter:

- (1) To record all the proceedings of such board in a book provided for that purpose;
- (2) To make regular entries of all their resolutions and decisions upon all questions;
- (3) To record the vote of each supervisor on any question submitted to the board, if required by any member present;
- (4) To preserve and file all accounts acted upon by the board, and on no account to allow such accounts to be taken from his office;
- (5) To certify, under the seal of the circuit court of his county, without charge, copies of any and all resolutions or decisions on any of the proceedings of such board, when required by such board or any member thereof, or when required by any other person upon payment of six (6) cents per folio therefor, and such certificate shall be prima facie evidence of the matters therein set forth;

(6) To perform such other and further duties as such board may, by resolution, require.¹⁶

When the board, under the sixth clause above, requires the clerk to perform other duties such as acting as clerk of a sub-committee, the clerk is not entitled to additional compensation.¹⁷

The statute provides that the clerk retain the books, records and accounts of the board of supervisors; all these items may be freely examined by the public without any charge. The clerk is required to indicate on every account the amount of any sum audited and allowed by the board, together with the charges for which the sum was allowed.¹⁸ The Attorney General has ruled that the journal of the board need not show the vote of the individual members nor that a roll call was taken on a particular matter.¹⁹ Whenever the record indicates that a resolution was passed but does not disclose the vote, it is presumed, according to a Supreme Court decision, that there was the necessary majority.²⁰ Furthermore the Court has held that the report of a committee, and the resolution adopting it, need not be offered in writing—although that might be better practice.²¹ In another case, the Court held that the employment by the board of one of its members would be presumed to be valid where the action is not shown to have been decided by his vote.²²

Compensation and Mileage for Attending Meetings

Each member of the board of supervisors is allowed compensation and mileage for attending meetings of the board. The state law formerly specified the limits of per diem compensation. Effective September 27, 1957, the law was amended so that the rate of compensation existing on that date shall be paid until a new rate is established by a two-thirds vote of the members of the board.²³ Previously the law had provided that each member of the board of supervisors should be allowed compensation of \$8.00 per day for his services in attending meetings of the board, but that this amount could be increased to a maximum of \$10.00 per day by a majority vote of the members of the board. The rate of per diem compensation to members of the board of supervisors during their term of office is not subject to the provision in Section 3 of Article XVI of the Constitution which prohibits increases in salaries after election or appointment.²⁴ The latter provision has been held not to prevent such prospective increases (otherwise complying with statutory conditions). Moreover, the provision in the same section prohibiting authorization of extra compensation after service has been rendered has also been held to be inapplicable to retroactive increases in the rate of per diem compensation.²⁵ A supervisor, who is also a city officer, is entitled

to the compensation unless there is a provision to the contrary in the city charter.²⁶

The law limits the number of days within a calendar year for which a member may receive compensation for attending meetings of the board. The limit varies according to the population of the county as determined by the most recent federal decennial census. The maximum number of days is 31 unless the county has a population of more than 40,000; if the population is not more than 240,000, the limit is 51, and if the county has a population of more than 240,000, the limit is 61 days.²⁷

The law also states that each member of the board shall receive the same rate of compensation described above if he serves as a member of a committee when the board is not in session—provided the services performed were ordered by the board or its chairman. No member is entitled to payment for more than 60 days in any one year as a member of a committee, except where other laws provide compensation for committee work. The limitation does not apply to the chairman of the board, either as an ex officio member of several committees, or for his performance of extra duties assigned by the board.²⁸ The limitation on the number of days for which compensation may be received as a member of a committee refers to the organizational year for which the committee was appointed and not to the calendar year.²⁹

A supervisor is not entitled to more than one day's compensation for any one day that the board or any committee is in session. For instance, if a member attends a board session and a committee meeting on the same day, he shall receive compensation for attendance at the board meeting only.³⁰ However, a full day's compensation may be paid for work necessarily performed by a supervisor in good faith even though the time spent may actually be only a portion of the day.³¹

Where a member has to leave home the day before the meeting of the board in order to arrive in time for the commencement of the session, and when a member cannot get home the day the meeting adjourns, he may be allowed compensation for time actually employed in going to and returning from home to the place of meeting by the most direct and usually traveled route.³²

The state law also provides that each member of the board shall receive 7 cents for each mile necessarily traveled in attending board meetings. But the number of days for which the rate is paid may not exceed the number of days for which per diem compensation for attending board meetings may be received. Each member is entitled

to the same rate for each mile necessarily traveled in attending a committee meeting for which he is entitled to compensation.

For purpose of compensation and mileage, committees are defined as consisting of members of the board, and not mixed committees including board members and outsiders who are not officials of any kind.³³ However, the county fair board comes within the provisions for compensation, because the law expressly authorized a mixed committee in that case,³⁴ and there are special provisions for the finance committee as previously described.

Notes to Chapter 3

1. Op. Atty. Gen. 1939-40, pp. 553, 555. July 17, 1940.
2. Op. Atty. Gen. 1945-46, p. 530. December 3, 1945, No. 0-4157.
3. MCL s. 46.1, MSA s. 5.321.
4. *Kalamazoo Township v. Kalamazoo County Clerk*, 1954. 339 M 619, 64 NW(2) 595.
5. MCL s. 46.3, MSA s. 5.323.
6. MCL s. 46.10, MSA s. 5.330.
7. MCL s. 46.11, par. 17, MSA s. 5.331, par. 17.
8. *Gale v. Board of Supervisors of Oakland County*, 1932, 260 M 399, at 404, 245 NW 363.
9. Op. Atty. Gen. 1916, pp. 364-8, at 368. February 8, 1916.
10. *In re Blue*, 1881, 46 M 268.
11. MCL s. 46.3, MSA s. 5.323.
12. *Baird v. Saginaw County*, 1924, 226 M 80, at 81, 197 NW 222.
13. *Leggatt v. Paddison*, 1930, 252 M 140, 233 NW 198.
14. MCL s. 46.29, MSA s. 5.352.
15. MCL s. 46.4, MSA s. 5.324.
16. *Ibid.*
17. *Wayne County v. Reynolds*, 1901, 126 M 231, 85 NW 574.
18. MCL s. 46.5, MSA s. 5.325.
19. Op. Atty. Gen. 1914, pp. 829, 830. June 23, 1914.
20. *Giddings v. Wells*, 1894, 99 M 221, 58 NW 64.
21. *Silsbee v. Stockle*, 1880, 44 M 561, 7 NW 160.
22. *Hanna v. Chalker*, 1904, 136 M 8, 98 NW 732.
23. MCL s. 46.30, MSA s. 5.353.
24. Op. Atty. Gen. 1937-38, pp. 341-3, at 343. September 13, 1937.
25. Op. Atty. Gen. 1953-54, pp. 79-80. December 2, 1952, No. 1609.
26. Op. Atty. Gen. 1930-32, pp. 409-12. December 31, 1931.
27. MCL s. 46.30, MSA s. 5.353.
28. *Ibid.*
29. Op. Atty. Gen. May 1, 1957, No. 2977.
30. Op. Atty. Gen. 1948-50, pp. 407-8. December 8, 1949, No. 1101.
31. Op. Atty. Gen. 1943-44, pp. 309-11 at 310. March 5, 1943, No. 0-515.
32. MCL s. 46.30, MSA s. 5.353.
33. Op. Atty. Gen. 1952-54, pp. 168-9. June 4, 1953, No. 1647.
34. Op. Atty. Gen. 1956, pp. 406-9. July 18, 1956, No. 2346.

CHAPTER 4

General Powers and Express Duties

Constitutional Provisions

Section 8 of Article VIII of the Constitution provides that the legislature may give to county boards of supervisors powers of a local, legislative, and administrative character which are not inconsistent with the provisions of the Constitution. In addition, Section 30 of Article V of the Constitution specifies that the legislature shall not pass any special acts if a general act can be made applicable. However, the Section also states that the applicability of a general act is a judicial question. With regard to special or local acts, the present Constitution differs from the previous Constitution, which was adopted in 1850. The latter did not limit the power of the legislature to pass special and local acts. Many such acts passed under the previous Constitution remained in effect after the present Constitution was adopted in 1908. Section 30 of Article V of the present Constitution provides that acts repealing local or special acts in effect on January 1, 1909, must receive a two-thirds vote of the legislature, and that other local or special acts shall not take effect until approved by a majority of the electors voting thereon in the affected district.

General Legislative Powers

Through various statutes, the legislature has authorized the board of supervisors to make rules to deal with specific functions. The term general "legislative powers" is used in this manual to describe the powers authorized by the legislature in paragraph 13, of Section 11 of the Act of 1851, as amended.¹ Paragraph 13 grants four general powers, subject to a two-thirds vote by the board of supervisors, and a possible referendum election. The four general powers are:

- (1) To pass such laws, regulations and ordinances relating to purely county affairs as they may see fit, but which shall not be opposed to the general laws of this state and which shall not interfere with the local affairs of any township, incorporated city or village within the limits of such county;
- (2) To provide suitable penalties for the violation thereof, but said penalties shall not exceed a fine of \$100 or imprisonment in the county jail for 90 days or both in the discretion of the court;

(3) To amend any local act of the legislature in force in their county and referring to matters within the jurisdiction of such board of supervisors or touching the local powers and duties of county officers, but the board of supervisors shall not have power to increase or extend its own powers, duties or jurisdiction and shall not have any jurisdiction over the circuit court;

(4) To change the limits of cities, villages and school districts within such county as may be provided by law, and in case there is no general law governing the subject, or where no change can be made in accordance with such general law, to change the limits of the villages and school districts upon petition of at least 10 per cent of the resident taxpayers, and to incorporate primary school districts.

These powers are subject to various procedural requirements, some of which seem to be merely formal while others are outmoded. For example the statute provides that the clerk of the board must have the laws, ordinances, regulations or acts of incorporations engrossed, signed by the chairman of the board, certified, and then transmitted to the governor for his approval. If the governor does not approve a measure, he is to return it, with his objections, to the clerk within ten days of receipt. The clerk is to submit the measure to the board at its next regular or special session, and the governor's objections are to be entered on the journal of the board. The act of the board is then reconsidered and if two-thirds of the members elected to the board approve, the act becomes law, (subject to the referendum described below). If, however, the governor approves the act, it is deposited with the Secretary of State. If the act is approved on reconsideration, the clerk of the board is to deposit it with the Secretary of State after certification.

The general legislative powers of the board of supervisors, set forth above, are subject to two further limitations.

No act of the board, shall take effect until 60 days after adoption by the board; in addition, if a petition for referendum is filed within 50 days after adjournment, the act shall not take effect until approved by the electors. Such petition must be signed by not less than 20 per cent of the electors in the area affected by the act. The petition must be filed with the county clerk and request that the act be submitted to the electors of the affected district for their approval or rejection. Approval requires a majority vote of the electors of the district at a regular election or a special election called for the purpose. The board of supervisors shall provide the manner of submitting such measures to the electors and of determining the result.

Meaning of "Purely County Affairs"

The general power of the board of supervisors to pass laws, regulations and ordinances, as described above, relates only to "purely county affairs." This is a substantial limitation on the ordinance making power of the board of supervisors. For instance, the Attorney General has ruled that the board cannot pass an ordinance licensing and controlling loud speaking equipment on the highways,² amending the state fish law as regards the catching of perch in a lake within the county,³ regulating the action of people traveling upon the public highways,⁴ controlling public dance halls even outside of the corporate limits of cities and villages,⁵ limiting the speed of motor boats on lakes and streams within the county,⁶ interfering in any way with the enforcement of the conservation laws of the state,⁷ prohibiting minors from frequenting or loitering in any place where intoxicating liquors are sold,⁸ prohibiting the sale of goods on Sunday,⁹ or regulating the handling of foodstuffs and beverages.¹⁰ Likewise, the county board cannot raise money in aid of a private enterprise. This rule has been applied even to non-profit corporations, such as the Salvation Army.¹¹

However, the legislature has expressly authorized the board of supervisors to appropriate funds for a public celebration on Armistice Day. The statute leaves the board free to determine the amount of such funds and the way they should be spent.¹² In addition, a statute enacted in 1945 authorizes the board of supervisors to set aside sums for the operation of local councils of veterans' affairs.¹³

General Powers Relating to Officers and Employees

The general powers of the board of supervisors relating to officers and employees of the county, including the powers of determining salaries, requiring reports, and removing appointed officials, are discussed in Chapter 12.

General Management Powers

The legislature has authorized the board of supervisors to represent the county and to take responsibility for the management of the property and business of the county in all cases where no other provision is made. Action under this authorization requires a two-thirds vote of all members elected to the board.¹⁴ The county board is also authorized to establish rules and regulations concerning the management of the interest and business affairs of the county and the mode of proceeding before the boards in all matters not especially provided for in a state law.

These and other powers relating to the management of the interest and business of the county will be discussed in subsequent chapters, and particularly in Chapter 13.

General Financial Powers

The state legislature has granted the county boards of supervisors certain general financial powers as follows:¹⁵

- (1) To borrow or raise by tax upon such county such sums of money as may be authorized by law;
- (2) To provide for the payment of any loan made by them, by tax upon such county, which shall in all cases be within 15 years from the date of such loan;
- (3) To prescribe and fix the salaries and compensation of all employees of their respective counties where not fixed by law, to adjust all claims against their respective counties except in counties having a board of county auditors and the sums allowed in such adjustment of claims shall be subject to appeal as shall be provided by law;
- (4) To direct and provide for the raising of any money which may be necessary to defray the current expenses and charges of said county, and the necessary charges incident to or arising from the execution of their lawful authority, subject to the limitations prescribed in this act: Provided, That the said several boards of supervisors shall have power to borrow in any year, in anticipation of the levy or collection of taxes for the same year, such sum of money, not exceeding 50 per cent of the tax to be levied or collected for the general fund of said county, as may be necessary to defray current expenses of said county. The money so borrowed shall be repaid from such tax when levied and collected.

These financial powers are supplemented by other statutory enactments. The various acts will be discussed in subsequent chapters, particularly Chapters 14, 15 and 16 dealing with taxation, borrowing, and accounting for funds.

Township Alteration

Section 15 of Article VIII of the Constitution provides that the board of supervisors of each organized township may organize and consolidate townships under such restrictions and limitations as shall be prescribed by law. The legislature has also granted the boards of supervisors power to make certain changes in townships, subject to specified procedures.¹⁶ The statutory requirements must be followed,

or, in the opinion of the Supreme Court, the county board does not have jurisdiction.¹⁷

The authority of the board of supervisors to alter townships include power to vacate, divide or alter the boundaries of any township, or to erect a new township or organize or consolidate townships. The power is to be exercised only if at least 20 per cent of the resident freeholders of each affected township apply for a modification in existing arrangements. However, if there were no more than 30 electors in the township at the last general election, the application may be made by not less than 5 electors who voted in the last election. If, in any township, there are less than 6 resident freeholders, or less than 5 electors at the last general election, a declaration of this fact and a petition for the consolidation of that township with another township may be filed with the board of supervisors by the judge of probate, the county clerk, and the county treasurer. The statute also specifies that the board be furnished with a map of all affected townships, showing the proposed alteration.¹⁸ A notice of the application, signed by the freeholders, electors, or county officers (as the case may be) shall be posted in five of the most public places in each affected township, four weeks previous to the application to the board. In addition, a copy of the notice must be published, in a newspaper printed in the county, once in each week for four consecutive weeks immediately preceding the meeting of the board of supervisors at which the application is to be made.¹⁹

Action by the board of supervisors on the application requires a vote of three-fifths of all the members elected to the board.²⁰

If the application is granted, a certified statement of the board's action must be filed, with a copy of the map, in the office of the county clerk. A certified copy of the action is also to be filed with the secretary of state for publication with the laws of the next legislature.

Whenever the board of supervisors specifies the boundaries of a new township, the board is to designate the name of the township and the time and place for the first annual township meeting. The board shall also appoint three electors of the township to preside at such meeting and to act as inspectors of electors at the meeting.²¹

Notes to Chapter 4

1. MCL s. 46.11, MSA 5.331.
2. Op. Atty. Gen. 1941-42, p. 448. December 16, 1941, No. 16, 1941.
3. Op. Atty. Gen. 1914, p. 279. October 7, 1913.
4. Op. Atty. Gen. 1928-30, pp. 477-9. July 13, 1929.

5. Op. Atty. Gen. 1930-32, pp. 188-190. May 1, 1931.
6. Ops. Atty. Gen. 1930-32, pp. 252-7, July 7, 1931; 1943-44, pp. 563-5, October 18, 1943, No. 0-1394.
7. Op. Atty. Gen. 1933-34, pp. 193-6. February 6, 1933.
8. Op. Atty. Gen. 1945-46, pp. 639-40. March 15, 1946, No. 0-4471.
9. Op. Atty. Gen., April 12, 1957, No. 2977.
10. Op. Atty. Gen. 1943-44, p. 163. November 24, 1942, No. 24970.
11. Op. Atty. Gen. 1937-38, pp. 59-60. March 5, 1937.
12. MCL s. 46.11a, MSA s. 5.332.
13. MCL s. 46.12b, MSA s. 5.333(2).
14. MCL s. 46.11, subpar. 16, 46.12; MSA s. 5.331, subpar. 16, 5.333.
15. MCL s. 46.11, subpars. 7, 8, 9 and 10; MSA s. 5.331, subpars. 7, 8, 9 and 10.
16. MCL ss. 46.14-15, MSA ss. 5.337-8.
17. *Scrafford v. Gladwin Supervisors*, 1879, 41 M. 647, at 651.
18. MCL s. 46.14, MSA s. 5.337.
19. MCL s. 46.15, MSA s. 5.338.
20. MCL s. 46.14, MSA s. 5.337.
21. MCL s. 46.16, MSA s. 5.339.

CHAPTER 5

Education

General Relations Between the County and the School District System

Michigan, like other states, has traditionally regarded public education as a distinct function to be undertaken separately from other governmental activities. When education became a public responsibility, school districts were organized as special governmental units largely independent of the county and other local units. This system is still recognized,¹ even though the number of operating districts may be decreasing. Each school district has a governing board² and frequently a superintendent of its own. Moreover, it has levied its own taxes, and it has usually received the largest allocation of the 15 mill maximum tax rate (see Chapter 14). In addition, it receives aid funds directly from the state. The allocation of the state aid funds is made either by specific statutory appropriation or by the state superintendent of public instruction under rules prescribed by statute.³ Amounts allocated to a county are paid to the county treasurer who disburses the funds to the school district treasurers.⁴ Because of the school district system, the board of supervisors has had only limited powers and duties in the field of education.

However, in recent decades the county has had an increasing role in public education. This has resulted in part from legislation authorizing a county (or two or more counties) to organize as a school district and from statutes providing for county or regional libraries. These powers have been particularly important in some counties or regions because of the increasing tendency to organize educational facilities in terms of larger areas. The powers will be discussed in some detail in this chapter.

County School Districts

The Michigan School Code of 1955 provides, among other things, that each county shall constitute a school district for certain purposes under the supervision and control of a county board of education.⁵ The School Code states that the district shall include all the territory of the county but must not supersede nor replace any of the school districts organized and operating under the School Code. Furthermore, the county district must not control or otherwise interfere

with the rights of school districts, except as provided by the law on the county school districts.

County Board of Education, Organization

The School Code outlines the procedure for organizing a county board of education and makes the county superintendent of schools responsible for initiating this procedure. This was to be done by a meeting of the secretaries of the boards of primary and fourth class school districts and the presidents of the boards in other school districts. The meeting was to take place on the first Monday of the second month after the effective date of the School Code (July 1, 1955). These school officers were to elect by ballot a board of education of five members, one for a term of two years, two for terms of four years and two for terms of six years. Thereafter, on the first Monday in June of each second year, successors shall be elected for terms of six years. The persons elected need not be members of boards of education in the county. A vacancy which occurs during a term is to be filled by the county board of supervisors. Removal for malfeasance and other causes is the responsibility of the superintendent of public instruction. No city or township is to be represented by more than two members of the board.⁶

The county board of education is a corporate body, which can sue and be sued, under the name "The Board of Education of the County of . . ." The School Code provides for the general manner in which the county board of education is to organize itself and conduct its meetings.⁷ The board has a president and vice-president elected annually by a majority of the board at the first meeting after July 1 each year. They have such duties as provided for by law and as prescribed in the by-laws, rules and regulations of the county board of education, provided the latter do not conflict with the law. The by-laws must specify the time and place for regular meetings and the conditions for calling special meetings. The county superintendent of schools is the secretary and executive officer of the board. The members of the board are to receive the same per diem compensation and actual and necessary traveling expenses allowed members of the board of supervisors, and such disbursements are to be paid from the funds of the county board of education.⁸

County Board of Education, Powers and Duties

The powers and duties of the county board of education are described in the School Code of 1955. In general, these relate to delinquent taxes, the purchase of library books and instructional equipment, the employment of a county superintendent of schools,

an annual school census, the employment of teachers and the conduct of cooperative educational programs.⁹

The county board of supervisors may be involved in certain financial matters. For instance, certain salaries and expenses after they have been authorized by the county board of education, are to be paid by the county treasurer from funds appropriated for the purpose by the county board of supervisors. These include the portion of the compensation of the county superintendent of schools that is paid from county funds, and the compensation of the deputy and assistants—including salaries and traveling expenses incurred in discharging their official duties. The same procedure is followed with respect to necessary and contingent expenses of the office of the county board of education and the county superintendent of schools for printing, postage, stationery, records, equipment, telephone, room rental, pupils tests, expenses of the health and social service program.¹⁰

The county board of supervisors may object to unwarranted items in the school board budget but it may not usurp the administrative discretion of the board of education.¹¹

The county board of education is to employ by contract a county superintendent of schools for a term not exceeding four years.¹² His qualifications, powers and duties are spelled out in the School Code.¹³ His salary is paid by the state treasurer from the annual appropriation of aid in support of public school districts. The salary ranges from \$3,300 to \$8,250, according to the population of the county, but the county board of education may pay additional amounts to the county superintendent.¹⁴

Combined County School District

Two or more adjoining counties, each having a population of less than 15,000, may combine to form a single county school district, when such organization has been approved by a majority vote of the qualified electors of each county involved. The question of organizing a combined county school district may be submitted at a general or special election by resolution of the board of supervisors. The notice required is the same as for election of county officers, and the ballot shall be substantially in the form prescribed in the statute. The action becomes effective 30 days after the last election in the combining counties. Thereafter the counties are considered a single county school district under the School Code.¹⁵

A county board of education is to be elected by the school officers of the combining counties at a joint meeting called by the county

superintendents of schools. The board must then appoint a county superintendent of schools at which time the prior appointments of county superintendents terminate.¹⁶ The board must also elect a treasurer who is authorized to receive funds appropriated by the counties involved. The board shall approve a depository for these funds, and the combined county treasurer may withdraw funds only as authorized by the combined county board of education. The treasurer shall post a bond with the secretary of the so formed board.¹⁷

The ways and means committees of the boards of supervisors of the counties combined in the district shall hold a joint meeting to determine the budgetary needs of the county board of education. The time and place of the meeting shall be set by the county superintendent of schools of the district, and he must call the meeting reasonably in advance of the regular October meeting. The committees of the board of supervisors shall adopt the budget for the school district for the succeeding year and allocate the pro rata share to the respective counties in proportion to the ratio of their property valuations as equalized by the state. The budget and apportionment are to be transmitted by the county superintendent of schools for the district to the respective county clerks who must present them to the boards of supervisors by the time of the October meeting. If a board of supervisors fails to approve the budget and appropriate the share determined, the budget must be reconsidered by the combined ways and means committees of the counties at a meeting prior to the adjournment of the October session. The decision of the joint committee will be transmitted to the boards of supervisors who must act prior to the adjournment of the October session.¹⁸

Before the following January 15, the treasurer of each county shall pay to the treasurer of the district board of education one-half of the respective county's share of the budget appropriated by the board of supervisors at the prior October meeting. The remaining portion of each county's share is to be transmitted by the county treasurer prior to July 15 of each year.¹⁹

Area Studies of Educational Conditions

The School Code of 1955 authorizes area studies of educational conditions. Such a study may cover an entire county, portion of a county, two or more counties, or fractions of contiguous counties. The study is to be authorized by the state superintendent of public instruction upon receipt of a petition and plan for the proposed area study. A petition and study plan may be made by the county board of education or the county superintendent of schools of any

county to be included in the area. The initiative may also be taken by general electors numbering at least 5 per cent of the vote cast within the cities, township, and counties lying within the area for the Secretary of State at the last general election.²⁰

The study plan is subject to the approval of the superintendent of public instruction, and it shall prescribe the membership of an area study committee. The members are to represent both urban and rural areas. The committee, after a comprehensive study, shall recommend changes in the school district organization and furnish school officials and the public information on educational conditions and needs. The committee is to report to the state superintendent within two years after its appointment.²¹ The committee may accept contributions in money, services or materials toward the cost of making the area studies.²²

Special Education Facilities

The School Code also authorizes the county board of education (or the board of a county school district composed of two or more districts) to provide special educational facilities for any "constituent school district" within the county (or combined counties), provided certain procedural requirements are met. For example, the relevant statutory provisions apply only if approved by a majority of the school electors of the district, present and voting, in any one year at the several school elections in the constituent school districts.²³ The procedure for submitting the question to the electors is set forth in the School Code.²⁴

For these purposes, "special education" means education for the deaf, hard of hearing, blind, partially seeing, speech defective, home-bound, mentally handicapped, crippled or otherwise physically handicapped, or children having behavior problems, as such handicaps are defined by the superintendent of public instruction.²⁵ The county boards may employ teachers and other personnel, provide for their transportation, purchase supplies and equipment, and secure office space.²⁶ Where there is a "special education center"—that is, a constituent school district which has contracted with the county board of education to provide special education²⁷—the county board of education may appropriate funds for the maintenance or construction of buildings, but the buildings are to be owned and administered by the school board of the special education center.²⁸ The county board of education may also grant subsidies to special education centers according to a formula specified in the statute.²⁹ The county board of education may also grant funds for buildings or equipment and make long-term contracts with the special education center

involved requiring the latter to accept non-resident pupils for special education.³⁰

The county board of education is to prepare annually a "special education budget," once the special provisions have become applicable. This is presented to the county tax allocation boards through the respective county clerks. The tax allocation board is to allocate tax rates to the county school districts. Such allocations shall not be made within the 15 mill limitation (to be described in Chapter 14) and may not exceed the limit authorized by the election at which the statutory provisions are approved. The municipal and township tax officials are to spread such taxes and pay them to the county treasurer. He may pay out the funds on order of the county board of education.³¹

State Aid to County School Districts

A part of the appropriation from the school aid fund for the fiscal year, ending June 30, 1958, was allocated to county school districts established under the provisions described above. The amount was stated as "the sum necessary but not to exceed \$650,000 to provide state aid to such districts in an amount equal to one-half of one per cent of the total state school funds distributed to local school districts of each county during the previous school year." However, if the total appropriation was not sufficient, proportionately lesser amounts were to be distributed. Additional aid was to be appropriated to districts formed by consolidating two or more county school districts. The allocation to a county district was subject to authorization by the superintendent of public instruction.³² Moreover, state aid to a county district was subject to the following conditions: (a) professional employees of the county school district shall meet the standards set forth in the teacher certification code and certain sections of the School Code; (b) the appropriation to any county school district is not to exceed the amount appropriated by the board of supervisors for county board of education purposes in the previous fiscal year (with some exceptions during the first two fiscal years); (c) the funds received must be used for specified purposes; (d) combined county districts are to receive an additional \$3,500 for each former county school district included in the consolidation; and (e) no county school district shall receive more than 10 per cent of the total appropriated for county school districts.³³

Loans by Counties to School Districts

A 1937 statute³⁴ granted certain financial powers to the board of supervisors of any county organized as a county school district under

a 1935 statute.³⁵ The latter statute was repealed by the School Code of 1955 which included new provisions for the organization of county school districts.³⁶ However, the 1937 statute appears not to have been repealed and the financial powers granted by that statute might possibly still apply to a county organized as a county school district. The financial powers include the power to grant or to lend money to any primary school district within the county and to all other school districts within the county not employing a superintendent of schools. The money can be used for improving health, sanitary and safety conditions of such schools and for the construction of school buildings or additions to school buildings. The board is authorized to accept as security for such funds notes issued in anticipation of current or delinquent taxes. Such a grant or loan may be made without the approval of the state loan board, the public debt commission, or any other state authority and irrespective of the amount of tax delinquency in the school district receiving the grant or loan.³⁷ The statute also provides that such grants or loans may be made by creating a fund for the purpose. The fund shall be under the control of the board of county auditors; if there is no such board, the fund shall be under the control of the board of supervisors. The fund is to be granted or loaned on the recommendation of the county board of education and in accordance with the terms and procedures determined by the board of supervisors.³⁸

County Library

The board of supervisors has power to establish a free public library for the use of the inhabitants of the county. The board may also contract with a governing body controlling a public library already established within the county for library service to the people of the county. The amount which the board agrees to pay for such service, or the amount appropriated for establishing and maintaining a public library, shall be a charge against the county. To defray this cost, the board may levy an annual tax in a manner similar to that followed in setting other taxes. The tax is to be paid to the county treasurer and the proceeds are to be known as the library fund.³⁹

The county library fund is to be administered by a county library board consisting of the county commissioner of schools and four other members. The latter members are appointed by the board of supervisors for four-year terms, except that initially their terms are one, two, three and four years, respectively.⁴⁰ The board of supervisors may authorize payment of per diem compensation and expenses to the four appointed members but not the school commissioner. The latter serves ex officio and is not entitled to additional compensation.⁴¹

The county library board is authorized to contract for the leasing, construction or maintenance of buildings or quarters, including the acquisition of sites, to house the county library service. The board can also do all other things necessary for the conducting of the county library service and charge the cost against the county library fund.⁴²

The library board, without specific authorization by the board of supervisors, may determine expenditures needed for the library service within the limits of the appropriation by board of supervisors from the general fund of the county as well as from fines and state aid grants. Likewise, the library board may determine the number of employees and their compensation. The board of supervisors may consider each of the items in the library budget but, according to the Attorney General, the board of supervisors may not exercise its powers in a manner as to assume, indirectly, the powers granted to the library board.⁴³

Regional Library

The state librarian is requested to develop a plan for establishing regional libraries throughout the state. When he has completed the survey of a proposed region, he should refer the proposal to the board of supervisors in each affected county. The plan may be adopted by the votes of a majority of each board of supervisors. If any board rejects the plan it may be altered by the state librarian and the plan may be adopted by the boards in the counties of the altered region.⁴⁴

Upon adoption of a regional plan, proposed by the state librarian, each board of supervisors shall name two members to a regional library board of trustees. Only one member may be a supervisor. If there are two counties in the region, the board shall consist of not more than four members from each county. In either case, the terms are for four years except that initially half of the members shall have two-year terms. Members of the board are to receive no compensation other than actual and necessary expenses.⁴⁵ The library board is granted various powers. One of these is to appoint a librarian from a list of three or more suitable candidates submitted by the state librarian. The board may also appoint necessary assistants and fix their compensation. The board has power to remove the librarian and assistants.⁴⁶

The sums necessary for the establishment and operation of regional libraries shall be appropriated by the board of supervisors in the region from the respective general funds. This appropriation shall be based on a budget proposed by the regional library board of trustees. The proposed budget shall be effective in all counties

of the region when approved by a majority of each board of supervisors. All appropriations are to be paid to the board of trustees and disbursed under its direction.⁴⁷ Townships entering a regional library system may not reimburse the county for amounts appropriated by it.⁴⁸

State Aid for County and Regional Public Libraries

The legislature has provided that 30 per cent of the funds appropriated by the state for aid to local public libraries shall go to a "county and regional library establishment and development fund" and the remainder to a "general library fund."⁴⁹ The former fund is to aid in organizing county and regional public libraries and in developing them to meet the standards prescribed by the state board for libraries.⁵⁰ Every public library receiving an apportionment of state aid funds must maintain a separate account. Expenditures from the fund may be reviewed by the state board for libraries or its representative. Likewise, the state board may require reports on expenditures.⁵¹

Notes to Chapter 5

1. School Code of 1955, MCL ss. 340.1, 2, 21, MSA ss. 15.3001, 3002, 3021.
2. MCL s. 340.28, MSA s. 15.3028.
3. MCL ss. 388.612-621, MSA ss. 15.1919 (52-61).
4. MCL s. 388.638, MSA s. 15.1919 (78).
5. MCL ss. 340.291-2, MSA ss. 15.3291-2.
6. MCL s. 340.294, MSA s. 15.3294.
7. MCL s. 340.295, MSA s. 15.3295.
8. MCL s. 340.296, MSA s. 15.3296.
9. MCL s. 340.297, MSA s. 15.3297.
10. MCL ss. 340.297(c), 340.300, MSA ss. 15.3297(c), 15.3300.
11. Op. Atty. Gen. January 19, 1957, No. 2029A.
12. MCL s. 340.297(c), MSA s. 15.3297(c).
13. MCL s. 340.298, MSA s. 15.3298.
14. MCL s. 340.300, MSA s. 15.3300.
15. MCL s. 340.302, MSA s. 15.3302.
16. *Ibid.*
17. MCL s. 340.303, MSA s. 15.3303.
18. MCL s. 340.304, MSA s. 15.3304.
19. MCL s. 340.305, MSA s. 15.3305.
20. MCL s. 340.306, MSA s. 15.3306.
21. *Ibid.*
22. MCL s. 340.307, MSA s. 15.3307.
23. MCL s. 340.310, MSA s. 15.3310.

24. MCL s. 340.311, MSA s. 15.3311.
25. MCL s. 340.309, MSA s. 15.3309.
26. MCL s. 340.320, MSA s. 15.3320.
27. MCL s. 340.309, MSA s. 15.3309.
28. MCL s. 340.320, MSA s. 15.3320.
29. MCL s. 340.322, MSA s. 15.3322.
30. MCL ss. 340.323-4, MSA ss. 15.3323-4.
31. MCL ss. 340.314-8, 340.326, MSA ss. 15.3314-8, 15.3326.
32. MCL s. 388.612, MSA s. 15.1919 (52).
33. MCL s. 388.626, MSA s. 15.1919 (66).
34. MCL s. 388.191, MSA s. 15.175.
35. Act 117, 1935.
36. MCL s. 340.291, MSA s. 15.3291.
37. MCL s. 388.191, MSA s. 15.175.
38. MCL s. 388.192, MSA s. 15.176.
39. MCL s. 397.301, MSA s. 15.1701.
40. MCL s. 397.302, MSA s. 15.1702.
41. Op. Atty. Gen. 1945-46, p. 571. January 3, 1946, No. 0-4193.
42. MCL s. 397.302, MSA s. 15.1702.
43. Op. Atty. Gen. 1956, pp. 76-79. February 15, 1956, No. 2417.
44. MCL ss. 397.151-2, MSA ss. 15.1781-2.
45. MCL s. 397.153, MSA s. 15.1783.
46. MCL ss. 397.154-5, MSA ss. 15.1783-4.
47. MCL s. 397.156, MSA s. 15.1786.
48. Op. Atty. Gen. 1945-46, p. 102. October 20, 1944, No. 0-2788.
49. MCL s. 397.103, MSA s. 15.1791(3).
50. MCL s. 397.103(a), MSA s. 15.1791(4).
51. MCL s. 397.106(b), MSA s. 15.1791(7b).

CHAPTER 6

Public Health

County Health Department

By state law, the board of supervisors in any county in Michigan may provide for a county health department to be paid out of general funds of the county.¹ The Attorney General has ruled that the expenses must be paid out of the general funds and that a mill tax cannot be allocated to the health department since such a department is not a taxing unit.²

If a county does not have a health department (either alone or with other counties), the board of supervisors may be required by an initiative and referendum to establish a health department. The state law provides that if 5 per cent of the registered and qualified electors of the county petition to include the question of establishing a county health department on the ballot, the board of supervisors must do so at the next regular election. If a majority of the electors voting on the question approve the proposal, the board of supervisors must establish a county health department to be paid from the general funds of the county.³ The plan of organization of the county health department must be approved by the state health commissioner.⁴ A county health department created by the electors cannot be discontinued except by the filing of a similar petition and by a majority vote of the electors. However, a department created merely by an act of the board of supervisors, may be discontinued by the board.

If the county has a health department, the board of supervisors may select a board of health of five members who may or may not be members of the board of supervisors. Initially, the terms of the members range from one to five years. Thereafter the terms are for five years, and eventually each member will have a five-year term with one term expiring each year.

The county board of health selects the health officer. He must possess the professional qualifications established and approved by the state health commissioner and is to act as the administrative officer of the board of health. After due hearing, he may be removed for incompetence or malfeasance in office by the county board of health or by the state health commissioner.⁵

District Health Department

Two or more counties, by a majority vote of the board of supervisors of each county and the approval of the state health commissioner, may unite to form and maintain a district health department. The district board of health is to be composed of three members of each board of supervisors involved; however, with the consent of the other boards of supervisors, a county may have a greater or lesser number of representatives. The statute provides that the district board of health shall select the district health officer and together with the state health commissioner exercise the same powers of control over him and in respect to the district health department that the board of supervisors has over the county health officer and county health department.⁶ Claims against such a department are to be audited by the district board, which has the same power to allow these claims as a board of supervisors has on claims against a county. There is also a comparable right of appeal the same as exists from a similar decision of the board of supervisors. The total amount of allowed claims is to be apportioned among the counties of the district on the basis of tax valuations and the officers of the counties are to issue vouchers for their respective shares.⁷

Authority of Local Boards of Health

The county or district board of health or the health committee of the board of supervisors, has the same powers and duties as conferred by law on boards of health of townships, villages and cities. However, all rules and regulations promulgated by a county or district board of health, (or the health committee of the board of supervisors), may be subject to approval or disapproval by a majority vote of the full board, or boards, of supervisors.⁸ The rules and regulations of a district board of health need not be published after being approved by the boards of supervisors.⁹

The county health department has jurisdiction throughout the county over both indigent and non-indigent cases, but this does not include non-indigent cases in cities having an organized health department with a full-time health officer. However, such cities may elect to join the county in the organization.¹⁰ In case of a joint city-county organization, the membership of the health board and the qualification of the members are determined by the board of supervisors without regard to the provisions of the city charter.¹¹ Moreover, the health officer or director of the joint department is considered a county officer and not a city officer.¹²

In case of a conflict, the power of the county board of health supersedes the power of township or village boards. The same applies

to the power of a city board, except for non-indigent cases where the city maintains a full-time health officer.¹³

All local boards of health are subject to the jurisdiction of the state health commissioner. The Attorney General has ruled that county or district health departments have no jurisdiction in townships and villages having an organized health department with a full-time health officer.¹⁴

County Nurse

Each county of the state, through its board of supervisors, has authority to employ public health nurses and to appropriate funds for salaries and their necessary and actual expenses. However, no person may be hired as a public health nurse unless she has registered as required by law and has provided evidence of prescribed training to the Michigan Department of Health. The nurses are to receive aid and advice from the state department of health and be governed by its rules and regulations. No person who objects may be compelled to receive examination, instruction or treatment. The work of the public health nurse may be directed by a county health nurse committee, composed of the chairman of the board of supervisors and four persons appointed by the board for three-year terms.¹⁵

State Aid to County Health Department

Each county maintaining an approved health department, either alone or with other counties, is entitled to a basic grant not to exceed \$5,000 per year. If additional amounts are appropriated for implementing the county and district health department law, a portion may be allowed for training persons for local health work, but this may not exceed 15 per cent of the appropriation. The balance is to be refunded to the counties or cities maintaining approved health departments, on a per capita basis, according to the state department of health population estimates, except that population served by approved county and district health departments shall be weighted by two. However, the basic grant plus any additional refund may not exceed 40 per cent of the cost of maintaining the county or district health department.¹⁶

County Liability for Indigent Patients

The board of supervisors is required by state law¹⁷ to pay the cost of caring for indigent persons with communicable diseases. This provision applies when a person coming from outside the county, or residing in any township, city or village either becomes infected, or recently has been infected, with a dangerous communicable dis-

ease. The county or district health department, or if none, the township, city or village, board of health may remove the person to a separate house or hospital, if his health permits, and to provide nurses and other assistance. The cost of these is to be charged to the person himself, his parents, or other persons liable for his support. If such persons are not able to pay, the county or district health department, or if none, the supervisor for the township or ward is to keep an itemized record of the expenses. A statement of expenses incurred for the indigent patient must be filed with the county clerk for presentation to the board of supervisors, or board of auditors, where there is such a board. The statement is to be audited and if the appropriate board finds that the services were necessarily performed and the amounts claimed are appropriate under the circumstances, the board is to allow the amount, or such part as a majority of the elected members of the board approve, and provide for immediate payment. The board of supervisors may borrow money on the faith and credit of the county to pay the expenses. In such case the amount is to be included in the next appropriation to be raised by taxation. The board may fix a minimum fee and mileage for medical attendance connected with contagious disease cases chargeable to the county. The board may also authorize the superintendents of the poor, upon application of a local board of health, to contract with a physician to attend contagious diseases.¹⁸

Care of the Feeble-Minded

A county has authority, by resolution of the board of supervisors, to provide for the care, custody and maintenance of all feeble-minded and epileptic persons within the county. The county may raise money by tax or by loan for the erection of buildings and the purchase of equipment; within the limits provided by the law, the board may issue bonds for repayment of the loan. (See Chapter 13). The county may raise by tax, within limits provided by law, the amount needed for the care, support and maintenance of such persons.¹⁹

Appropriations for Hospitals and Sanatoria Constitutional Provisions

Section 11 of Article VIII of the Michigan Constitution provides that any county in the state, either separately or in conjunction with other counties, may appropriate money for the construction and maintenance or assistance of public and charitable hospitals, sanatoria or other institutions for the treatment of persons suffering from contagious or infectious diseases. The Supreme Court has held that the word "charitable" in this provision has a broad meaning, and

that it embraces not merely alms-giving but also the improvement and promotion of human happiness.²⁰

The Court has also held that the Constitutional provision authorizing appropriations for certain charitable institutions is self-executing and does not depend upon a valid legislative enactment.²¹ However, there are numerous statutes granting the counties authority to establish hospitals or sanatoria. These differ somewhat in the type of hospitals involved, the size of the counties authorized to act, and the amounts which may be appropriated.

County Taxation in Aid of Hospitals

One act of the legislature relates to the power of the county to impose taxes on property for constructing or maintaining hospitals and sanatoria, either within the county, or in conjunction with other counties.²² However, the tax may not exceed two-tenths of one mill on each dollar of assessed valuation unless the matter is submitted to the qualified electors of the county. An exception is made for a county with a population of more than 25,000 persons. For this purpose such a county may levy a tax not to exceed one mill on each dollar of assessed valuation for no more than two years.²³ Any institution receiving such assistance must report once a year to the board of supervisors. The report must cover various subjects specified in the statute.²⁴

Other statutes relating to hospitals and sanatoria also include provisions for raising money by taxation, under specified conditions.

County Public Hospital

One state law sets forth a procedure whereby any county may establish and maintain a public hospital. A petition is first presented to the board of supervisors signed by 5 per cent of the qualified electors of the county asking for an election on whether bonds should be issued and an annual tax levied to establish and maintain the hospital.²⁵ The petition should state the maximum amount to be expended to purchase, lease or build the hospital. A 90-day notice of the election is also required. If a majority of the votes cast approves, the board of supervisors is to appoint a board of trustees of seven members. The statute outlines the manner in which the trustees are to organize and operate the hospital.²⁶ The board of trustees may not issue rules which regulate the practice of medicine.²⁷

A county which has provided for hospital trustees and which has voted a tax (not exceeding 20 years) for hospital purposes may issue bonds in anticipation of tax collections. The board of trustees is to certify the amounts necessary, but the bonds may not exceed the

amount to be raised through taxation. The bonds must mature within 15 years and be in denominations of from \$100 to \$1,000 with a maximum interest rate of 5 per cent. The bonds may be redeemed at the pleasure of the county after five years.²⁸

In addition, the board of supervisors may each year appropriate an amount not exceeding 5 per cent of its general fund for the improvement and maintenance of any public hospital so established.²⁹

The legislature has also authorized Wayne County to establish a university county hospital at a maximum cost of \$2,000,000.³⁰

In another statute, the legislature has authorized the board of supervisors of a county having a population of 100,000 (by the latest federal decennial census) to establish and operate a hospital for the treatment of persons suffering from contagious and infectious diseases, of indigent persons suffering from any physical ailment impairment, and, temporarily, of mentally ill patients.³¹ Any person afflicted with a contagious or infectious disease, for whose treatment and care the county is responsible, is to be admitted to such hospital or institution after certification by the county health officer. Likewise, any indigent patient, for whose care the county is responsible, is to be admitted by order of the county social welfare board.³²

The board of supervisors determines the sum to be appropriated for acquisition, ownership, construction, establishment, maintenance, operation and equipment; in case of construction, the board shall designate the site. The board may raise the necessary funds by taxation. However, the tax for original acquisition and construction may not exceed, in any one year, one mill on each dollar of assessed valuation. Funds may be raised by taxation in successive years, and the board of supervisors may also utilize any unexpended balance in the general fund. The various sums are to constitute a special fund. Amounts not needed for acquisition or construction may be used for expenses of operation and maintenance. The board of supervisors is to appoint a five-member board of trustees for any hospital created under this statute. The management and control of the hospital by the board of trustees is subject to any relevant resolution of the board of supervisors or a committee of the supervisors selected for that purpose. Contracts for acquisitions and construction are to be let by the board of supervisors. The board of trustees may employ a medical superintendent, physicians, nurses and other employees, but the employment is to be within the appropriations made by the board of supervisors.³³

The board of trustees is to report to the board of supervisors, prior to the October session, on the operations, receipts and disburse-

ments for the preceding year. An estimate of the budget necessary for the ensuing years is also to be presented to the board of supervisors, which shall authorize the amount to be raised by taxation. The board of trustees may expend only funds appropriated by the board of supervisors. The amount raised by taxation in any one year may not exceed one mill on each dollar of assessed valuation unless the matter is submitted to the electors and approved by a majority of those voting.³⁴ One provision of this statute authorizes Wayne County to establish a county general hospital.³⁵

County Tuberculosis Sanatorium

The board of supervisors of any county with a population of more than 30,000 (at the last decennial census) may establish, maintain and operate a tuberculosis sanatorium in accordance with a special state law.³⁶ Plans are to be prepared in cooperation with the state health commissioner. The sanatorium may not be erected on the lands of the county poor commission and may not have less than 50 beds. The board of supervisors is authorized to raise the funds by taxation, but the tax for original construction and equipment may not exceed in any year one mill on each dollar of assessed valuation. Taxation may be spread over successive years and must be limited to a period of three years. Revenue not needed for construction purposes may be used for operation and maintenance. The board of supervisors is to appoint a board of trustees of three resident taxpayers to manage the sanatorium. Under this act, two or more counties may cooperate for the establishment, maintenance and operation of a joint county sanatorium.

There is also another statute which deals particularly with joint county sanatoria.³⁷

It provides that two or more counties may establish and maintain a joint county sanatorium for treatment of tuberculosis. To this end, each board of supervisors may appoint three taxpayers of the county (who are not members of the board) to a joint committee which will prepare a report on the cost and site of the joint sanatorium. If the report is adopted, each board of supervisors is to name two resident taxpayers for a board of trustees for the sanatorium. Each board of supervisors is also to name a committee of three of its own members to cooperate with the board of trustees. The committee is to estimate the necessary expenditures, and the board of trustees is to advertise for plans for a building. Together they are to allocate the costs in proportion to the state-equalized valuations of the counties. The amounts are to be certified to the boards of supervisors and spread as a tax at the October session, in accordance with

the general tax law. However, a board of supervisors may in its discretion borrow a part or all of the cost and issue an obligation of the county as security. The statute also sets forth various procedures for dealing with funds, advertising for bids, and similar matters, which should be considered in event the project is undertaken.

Coroner and County Medical Examiner

The state law provides that two coroners are to be elected at the biennial general election.³⁸ However, a 1953 statute authorizes the board of supervisors to abolish the position of coroner, with the approval of the electors, and then to appoint a county medical examiner for a three-year term.³⁹ Moreover, in a county with a population of from 250,000 to 500,000, the board of supervisors may themselves abolish the office of coroner and transfer the duties to the public health officer appointed under statutory authorization.⁴⁰

The legislature has enacted a number of additional provisions regarding coroners in counties having a population of 250,000.⁴¹ In such counties, a coroner, at the time of his appointment or election, must be a graduate of a regularly incorporated medical college, must be a registered physician or surgeon, and must have practiced for at least five years. Each coroner may appoint a deputy who must have the same qualifications. The deputy has power to perform the duties of the coroner. The salaries of the coroner and deputy are to be fixed by the board of supervisors, subject to specified minimum levels. The salary of the coroner is not to be less than \$2,000 per year in a county with a population of from 250,000 to 500,000, and not less than \$7,500 in a county with a population of more than 500,000. These salaries are to be in full payment for services and all fees collected by or for the coroners or their deputies are to be paid into the general fund of the county. The minimum salary of the deputy is \$1,200, or \$2,500, depending upon the population of the county. The coroner also has power to appoint clerks and assistants, as specified in the statute. Their compensation is to be fixed by the board of supervisors and paid in the same manner as other county employees.⁴²

The question of abolishing the office of coroner, and permitting the appointment of a medical examiner, may be submitted to the electors at any general or special election by a resolution of the board of supervisors. The board is required to submit the issue if requested by a petition signed by 10 per cent of the qualified electors of the county at the last preceding general election.⁴³ The proposition

is approved if favored by a majority of the electors voting on the matter.⁴⁴

If the office of coroner is thus abolished, the board of supervisors is to appoint a medical examiner and such deputies as are necessary. The board is also to determine their compensation. County medical examiners may not charge the service rates established for coroners.⁴⁵ The examiners and deputies are entitled to receive their actual and necessary traveling and other expenses, within the appropriation made by the board of supervisors. The examiners and deputies must be physicians licensed to practice within the state and must be residents of the respective counties. In counties having a civil service system, the approval or removal of the examiners and deputies must comply with the civil service law. County medical examiners do not need to file bonds.⁴⁶

The authority and responsibility of the county medical examiner are spelled out in the statute which permits their appointment.⁴⁷ Among other things, they have all powers and duties designated by law for coroners.

The statute authorizing the board of supervisors to transfer the duties of the coroner to the county health officer also states that the board is to set the salary of the health officer, provide for necessary deputies and furnish morgue facilities.⁴⁸

Notes to Chapter 6

1. MCL s. 327.201, MSA s. 14.161.
2. Op. Atty. Gen. 1945-46, pp. 402-3. July 2, 1945, No. 0-3712.
3. MCL s. 327.201, MSA s. 14.161.
4. MCL s. 327.202, MSA s. 14.162.
5. MCL ss. 327.203-4, MSA ss. 14.163-4.
6. MCL s. 327.207, MSA s. 14.167.
7. MCL s. 327.208, MSA s. 14.168.
8. MCL s. 327.206, MSA s. 14.166.
9. Op. Atty. Gen. 1955-56, Vol. 1, p. 209. April 20, 1955, No. 2041.
10. MCL s. 327.205, MSA s. 14.165.
11. Op. Atty. Gen. 1947-48, pp. 497-8. October 28, 1947, No. 623.
12. Op. Atty. Gen. 1947-48, pp. 634-5. March 29, 1948, No. 731.
13. Op. Atty. Gen. 1943-44, pp. 98-9. September 30, 1942, No. 24.602.
14. Op. Atty. Gen. 1939-40, pp. 463-4. April 9, 1940.
15. MCL ss. 338.381-384, MSA ss. 14.701-704.
16. MCL s. 327.208a, MSA s. 14.169.
17. MCL s. 327.15, MSA s. 14.75.
18. *Township of Port Huron v. St. Clair County*, 1934, 269 M. 326, 257 NW 833.

19. MCL s. 330.251, MSA s. 14.871.
20. *Bruce v. Henry Ford Hospital* (1931) 254 M 394, 236 NW 813.
21. *Sault Ste. Marie Hospital v. Chippewa County Treasurer* (1920) 209 M. 684, 177 NW 297.
22. MCL s. 331.101, MSA s. 14.1121.
23. MCL s. 331.102, MSA s. 14.1122.
24. MCL s. 331.104, MSA s. 14.1124.
25. MCL s. 331.151, MSA s. 14.1131.
26. MCL s. 331.154, MSA s. 14.1134.
27. *Albert v. Gogebic County Hospital*, (1954), 341 M 344, 67 NW (2) 244.
28. MCL s. 331.156, MSA s. 14.1136.
29. MCL s. 331.159, MSA s. 14.1137.
30. MCL s. 331.251, MSA s. 14.1149 (1).
31. MCL s. 331.202, MSA s. 14.1150 (2).
32. MCL s. 331.207, MSA s. 14.1150 (7).
33. MCL ss. 331.202-205, MSA ss. 14.1150 (2)-(5).
34. MCL s. 331.210, MSA s. 14.1150 (10).
35. MCL s. 331.212(a), MSA s. 14.1150 (12a).
36. MCL ss. 332.151-154, MSA ss. 14.1091-1094.
37. MCL ss. 332.101-105, MSA ss. 14.1061-1065.
38. MCL s. 47.127, MSA s. 5.951.
39. MCL s. 52.201, MSA s. 5.953 (1).
40. MCL s. 52.214, MSA s. 5.971 (1).
41. MCL ss. 52.111-9, MSA ss. 5.961-9,
42. MCL ss. 52.112-5, MSA ss. 5.962-5.
43. MCL s. 52.215, MSA s. 5.953 (15).
44. MCL s. 52.201, MSA s. 5.953 (1).
45. *Op. Atty. Gen.* 1955, pp. 95-6. March 4, 1955, No. 1954.
46. *Ibid.*
47. MCL ss. 52.202-213, MSA ss. 5.953 (2)-(13).
48. MCL ss. 52.141-6, MSA ss. 5.971 (1)-(6).

CHAPTER 7

Social Welfare

The State Department of Social Welfare

Social welfare activities in the county are undertaken largely in cooperation with those of the state. The powers and duties of the board of supervisors in this field are set forth mainly in the laws dealing with various social welfare functions of the state and the county. These functions include, among other things, the support of the poor, the foster care of children, the distribution of public assistance benefits under the Federal Social Security Act, and the development of child welfare programs.

In general, these functions are supervised by the state department of social welfare, which consists of the social welfare commission, a director and various assistants and employees.¹ The state social welfare commission is authorized to adopt plans and rules necessary to qualify for federal assistance; the commission is also authorized to make agreements with local units of government to carry out plans desirable for the welfare of the people of the state.² The social welfare commission is, among other things, empowered to distribute funds to counties, to develop child welfare programs, to inspect county infirmaries, and to arbitrate disputes between counties on the responsibility for public aid or relief to particular persons.³

State Distribution of Funds

The state commission of social welfare distributes funds for "general relief," for "social aid" and for foster care.

"General relief" refers to unemployment relief and poor relief, including medical care and care in a county medical care facility, but excludes other infirmary care or hospitalization. It also includes provision for the burial of indigent persons. General relief is distributed to the county district and city departments of social welfare on the basis of monthly reports, which indicate the need for relief as demonstrated by the counties' experience and financial resources. Funds distributed by the state to a county, district, or city department may not be less than 30 per cent of the amount expended by the local department for general relief. Funds cannot be distributed in excess of 30 per cent until the formula has been approved by the commission and presented to the state administrative board and not disapproved.⁴ There may be some limitations on the expenditures

which may be claimed for this purpose. For instance, the Attorney General has ruled that a county cannot claim matching of state funds for relief granted by the county department to a person when the department is holding property illegally transferred by the relief recipient.⁵

The commission for social welfare also allocates and distributes funds either appropriated by the legislature or received from the federal government for what will be called "social aid." "Social aid" is not defined in the state law. However, it is sometimes used, in effect, to refer to the assistance dealt with in the Federal Social Security Act—that is, old age assistance, aid to dependent children, aid to the blind and aid to permanently and totally disabled persons.⁶ "Social aid" is a convenient term for these forms of assistance, and it will be used for that purpose in this manual. Funds for social aid are dealt with apart from other appropriations. To this end, an irrevocable "medical assistance account" has been created by state law within the general fund of the state to which are deposited funds either made available by the state or received from the federal government for social aid. Such balances may be used only for this particular purpose and cannot revert to the unrestricted general or any other fund, until liquidated by the legislature.⁷

The state commission of social welfare also distributes to the counties funds appropriated by the legislature for the foster care of children. Distribution is made to those counties whose annual expenditures from county funds for foster care exceeds a basic amount. Generally, the basic amount equals $1\frac{1}{2}$ hundredths of 1 per cent of the value of the taxable real and personal property of the county as determined by the state board of equalization for the preceding year. However, the commission may reduce the basic amount, if it finds, after careful examination of financial resources, that the county is unable to provide foster care in such amount. Nevertheless, the basic amount cannot be less than \$2,000. The commission is to make an original grant of 90 per cent of the first \$2,000 of annual expenditures from the child care fund of the county.⁸ (The nature of the county child care fund will be described later in this chapter.)

County Department of Social Welfare

The state law⁹ has created for each county a department of social welfare, consisting of a county social welfare board and the supervisor of the bureau of social aid, together with assistants and employees necessary to operate the department. The executive head of the county bureau is a supervisor appointed and employed by the director of the state department of social welfare. The director of the county

department, if eligible, may be appointed as supervisor of the bureau of social aid. The law also states that "the board of supervisors in each county shall provide suitable office accommodations and equipment and supplies for the use of such county department."

The county social welfare department, like the state department, now embraces a number of functions which previously were dealt with by other agencies. For instance, the Social Welfare Act of 1939, as amended in 1950 and 1957, transferred the powers and duties of the county superintendent of the poor to the county department of social welfare.¹⁰

The administration of the powers and duties of the county department of social welfare is vested in the county social welfare board.¹¹ The department and the board of social welfare are independent units which may be sued in their own name, but the county must be named if damages are sought from the county.¹²

County Social Welfare Board

The county welfare board consists of three members appointed from persons resident within the county and holding no elective office. Two are appointed by the county board of supervisors (at its October session) and one by the state social welfare commission. (In Wayne County, only supervisors outside Detroit may vote on the appointments, as long as Detroit has a separate department of social welfare.) The members of the social welfare board have three-year terms, but the terms are staggered. When first appointed, the member named by the state social welfare commission had a one-year term and those appointed by the board of supervisors had two- and three-year terms. Each member must file the constitutional oath with the county clerk. Each member holds office until his successor is appointed and qualified. Vacancies are filled in the same manner as the appointment. A majority of the board constitutes a quorum.

The social welfare board meets on the call of the chairman, or on a written request to the chairman signed by two members of the board. It must hold not less than 12 meetings each fiscal year with an interval of no more than one month between meetings. At the first meeting after the appointment of any new member, the members choose one of their number as chairman. He continues to act as chairman until his successor is selected. Members are entitled to reimbursement for travel and other expenses.¹³ The county board of social welfare may be a full-time working board.¹⁴ Each individual member's salary and expenses are to be fixed by the county board of supervisors according to the time necessarily devoted to the performance of duties.

District Department of Social Welfare

Two or more counties may organize a district department of social welfare and medical relief by a majority vote of the elected members of the board of supervisors of each county. The administration of such a department is vested in a district social welfare board and a medical advisory council appointed from persons resident within the district. The members generally serve for three-year terms. One member is appointed by the state social welfare commission (initially for a one-year term) and two members are appointed by the board of supervisors for each county within the district (initially for two- and three-year terms). Thus, the number of members of the board varies with the number of counties within the district. In general, the provisions of the state law applicable to county social welfare boards also apply to district social welfare boards.¹⁵

County-State Relations

A county or district social welfare board is required to adopt rules and regulations which do not violate any express provision of state law. Moreover, the rules and regulations must be filed with the state department of social welfare, and the county or district social welfare board must review them at least once in each year. The state department may audit case records and may withhold the distribution of state funds in any case where there is a question of a violation of either state law or the board's rules and regulations. However, a county or district board is governed by rules and regulations of the state department only as to those forms of relief which are wholly or partly financed by federal funds.¹⁶

The state law provides that the county board shall cooperate with the state department of social welfare in handling the welfare and relief problems of the county, and the board may adopt plans required or desirable to participate in the distribution of federal or state funds or to receive federal or state assistance. The board may adopt any rules or regulations to enable the county to participate in such plans. In administering the powers and duties assigned to the county department, the board is to emphasize the prevention of social disabilities, the removal of causes of such disabilities and the restoration of individuals to self-support and to normal conditions of life.¹⁷

Department Director, Other Officials, and Employees

A county or district social welfare board may employ a director as the executive officer for functions not financed in whole or in part by federal funds. The director also serves as secretary of the board,

and is responsible to the board for the performance of his duties. He is not to hold an elective office and is to devote full-time to his duties as director. He is to receive compensation fixed by the social welfare board and approved by the county board or boards of supervisors. He is also to receive actual and necessary traveling and other expenses as provided by law.¹⁸ The Attorney General ruled during 1945 that the appointment of the directors of county social welfare departments is subject to the approval of the board of supervisors.¹⁹ A member of the county social welfare board may be designated as the director of the county department.²⁰

The county board of social welfare may also appoint an executive head of any institution under the supervision and jurisdiction of the board. The board may also employ such assistants and employees and incur such other expenses as may be necessary to carry out the provisions of the state law, but the number of assistants and employees and their compensation must be within the funds made available. Assistants and employees are entitled to actual and necessary traveling and other expenses incurred in the discharge of their official duties.²¹

The approval of the board of supervisors is required for the selection of personnel and for the establishment of the qualifications of assistants and employees necessary for relief functions when these are not financed jointly by state and federal funds.²²

The Attorney General, in 1953, ruled that persons employed jointly by the county and a state welfare agency, paid by the latter and supervised by a person in a dual capacity of director of county and state welfare activities, are considered to have two distinct employers—the county and the state.²³ A subsequent state law, to be noted later, appears to make an exception to this rule for purposes of the state retirement system.

County Bureau of Social Aid

The state law has created within each county department of social welfare a county bureau of social aid. The law has also provided that applications for social aid—that is, old-age assistance, or aid to dependent children, the blind, or the permanently and totally disabled—should be filed with the county bureau in a manner described by the state social welfare department. The executive head of the county bureau of social aid is called a “supervisor” and is appointed and employed by the director of the state department of social welfare. His compensation and expenses, and those of his assistants and employees, are paid in the same manner as those of state officers.²⁴

Employees performing integrated services are defined as full-time state employees for the purpose of the state retirement system and the county must reimburse the state for payments to the retirement fund in respect of salary earned on county functions.²⁵ However, several conditions must be met: the board of supervisors and the county social welfare board must have agreed with the state social welfare commission on a plan for the integration of the services administered by the county social welfare board and the supervisor of the bureau of social aid. Furthermore, the plan must include payment by the state of the salaries of employees performing integrated services and must specify reimbursement of the state by the county for the portion of salary earned in respect of county functions.

The state law sets forth the requirements which must be met by applicants for the various forms of social aid.²⁶

Other Powers and Duties of the County Department

The county department of social welfare has the power and duty to administer a public welfare program,²⁷ that is, among other things:

- (1) To grant general relief, that is, unemployment relief and poor relief, including medical care, but not hospitalization and infirmary care other than in a county medical care facility. Such relief is to be granted to any person legally settled in Michigan;
- (2) To supervise the operation of the county medical care facility, and create within the county department a medical care division;
- (3) To furnish such care to needy persons as will tend to restore their independence;
- (4) To require each applicant to furnish proof of the need for aid, relief, assistance or benefit, and to investigate each applicant;
- (5) To investigate probate court matters pertaining to dependent, neglected and delinquent children and wayward minors, and to assist in developing child welfare programs;
- (6) To arrange for burial of indigent persons; and
- (7) To act as agent for the state department of social welfare as requested and to administer other welfare functions as may be vested in it.²⁸

Legal Settlement for General Relief

General relief may be granted to a person who has a legal settlement in any county of the state. A legal settlement is acquired by an emancipated person who has lived continuously in a county of the state for a period of one year with the intent to make it his home and who during the one-year period has not received any public or private relief, except relief resulting from a civil defense emergency

or support from friends, charitable organizations, or relatives, other than legally responsible relatives. However, time spent in a public institution is not counted in determining settlement. A legal settlement is lost by remaining away from the state for an uninterrupted period of one year, except for labor or other special or temporary purposes.

A person having a legal settlement in a county of the state, may acquire a legal settlement in another county or city operating a separate department by residing there continuously for one year regardless of whether he receives any relief or support during the year, provided he is not receiving care in a public institution. The state law also deals with the effect of marriage upon settlement.²⁹

The state law also sets forth the various procedural steps to be taken in determining the eligibility of an applicant for general public relief. However, these requirements do not apply to temporary relief pending disposition of an application.³⁰

Temporary emergency relief may be given to indigents with no settlement in any county of the state as the county department thinks necessary. If no other funds are available for the purpose, the necessary expenses of transporting the person to another state or nation may be incurred, if information reasonably shows that he has a home or legal residence in such state or nation.³¹

County Medical Care Facility

The county social welfare board is authorized, with the approval of the board of supervisors, to supervise and be responsible for the operation of a county medical care facility. Likewise, the board of supervisors of any county may decide to erect a county infirmary or county medical care facilities for the care of the poor and unfortunate.³² A medical care facility is intended primarily to serve persons, otherwise eligible, who are 65 years of age or older, who need treatment for senility, or who are blind, chronically ill or disabled.³³

To defray the cost of construction in establishing or extending a medical care facility, the board of supervisors may raise in any one year a sum not to exceed one-tenth of a mill of each dollar of assessed valuation. The proceeds are to be deposited by the county treasurer in a special fund and used only for the purpose for which the tax is spread. Money is to be paid out on order of the county social welfare board.³⁴

Joint County Medical Care Facility

Any two or more counties may cooperate to establish and operate a joint county medical care facility. To this end, the boards of super-

visors may appoint committees which will combine into a joint committee, with a chairman and secretary selected from their members. The joint committee is to make a report to each board of supervisors. Thereupon, each board of supervisors has power to take such action as granted by law with reference to a medical care facility in a single county.³⁵ If a joint facility is to be constructed, each board of supervisors is to name three members of the county social welfare board to serve on the board of trustees for the joint facility. The board of trustees is to cooperate with the state department of social welfare in constructing and equipping necessary buildings. The state law grants the board of trustees various powers and duties relating to the establishment and operation of the joint facility. For one thing, the board is to be a corporation with the usual powers of public corporations.³⁶

The cost of establishing the joint county medical care facility is borne by each county in proportion to its assessed valuation. Each board of supervisors may raise in any one year for this purpose a sum not exceeding one-tenth of a mill on each dollar of assessed valuation. This is regarded as a special tax and the revenue is to be transmitted to the treasurer of the county in which the facility is to be located. All proceeds are to remain in a special fund to be used solely for the purpose for which the tax is spread. However, funds received for construction may be used for operation of the facility. Payment is to be made on order of the board of trustees for the facility. The cost of operation is to be borne by each county in proportion to the number of persons kept by each county in the facility.³⁷

Probate Court, Juvenile Division

Some of the social welfare activities of the county are under the supervision of the probate court and its juvenile division. In certain matters, these activities involve the board of supervisors. The board determines the compensation for the probation officer and may supplement the salary authorized for the county agent.

The state law provides that the probate court may appoint a probation officer who shall receive such compensation as the board of supervisors may appropriate.³⁸

The county agent is an officer of the juvenile division of the probate court under the supervision of the probate judge. His duty is to organize, direct and develop the child welfare work of the court when authorized by the judge. He also may supervise children released from public institutions, with the approval of the judge he may investigate children and families as requested by the state department of social welfare.³⁹

The state law requires the governor, upon the recommendation of the probate judge or judges, to appoint "some suitable person to act as county agent."⁴⁰ The county agent is not subject to the civil service law of the state. The governor may also appoint one or more assistants in counties having a population of more than 75,000 inhabitants. The number of assistants depends on the population of the county. These appointments are also on the recommendation of the probate judge or judges.

The compensation of the agents and assistants is set forth in the statute and is to be paid by the state treasurer. In counties with less than 20,000 inhabitants, the agent receives \$7.00 for each half day or \$14.00 per day for each full day actually spent in performing his official duties. In other counties, the agents must devote their entire time to their official duties, and they receive salaries ranging from \$3,920 to \$5,940, depending on the population of the county. Assistants receive from \$3,920 to \$4,514, depending on the population of the county. Likewise, the necessary and actual expense incurred by the agents and assistant agents in the performance of their official duties are to be paid by the state treasurer, in accordance with the accounting laws of the state.

The board of supervisors may vote to pay the county agent or assistant county agent an amount in addition to the salary or per diem specified in the statute. Otherwise, the amounts specified shall be compensation in full for the services performed and no other fees or compensation shall be received for his services.

County Finances Relating to Social Welfare

There are several statutory provisions relating to the financial management of county welfare activities and some of these provisions involve the board of supervisors. The principal provisions will be described in subsequent paragraphs of this chapter.

Appropriations by Board of Supervisors

The county social welfare board must each year submit to the board of supervisors an estimate of the funds needed to carry out the provisions of the law, including funds for the several institutions under the social welfare board. The estimate is to be presented at the annual meeting of the supervisors, or at such other time as the board of supervisors may designate. The estimate is to be accompanied by a statement of all money received and expended. In the case of a district department, the district board must submit an estimate to the board of supervisors of each county in the district.⁴¹

The state law provides that the board of supervisors shall, within its discretion, make appropriations necessary to maintain the various welfare services within the county. In case of a district department of social welfare, the board of supervisors of each county is to appropriate funds necessary for the welfare services of the county, and the administrative expenses of the district department are to be defrayed in proportion to the population at the last federal decennial census. However, the cost of administering services financed in whole or in part from federal funds is to be paid from such funds.⁴²

Relations with Townships and Cities

The board of supervisors, by a two-thirds vote of its total membership, may provide for distinguishing—among township, city and county—those cases of poor persons who have neither a legal settlement in the county nor legal settlement in the state, but who receive general relief and infirmary care, (but not hospitalization). The plan when adopted is mandatory for all townships and cities of the county. The county department is to submit monthly bills for relief extended to the townships and cities and these should be paid by the close of the succeeding month. The board of supervisors may also amend or abolish the distinction between the township, city and county, except that it cannot abolish the distinction in respect of a city maintaining a separate department of social welfare.⁴³

In a county in which there is a city operating its own city department of social welfare, the county is to levy a tax of uniform rate throughout the entire county outside the corporate city limits. The money thus raised will be used to defray the cost of the county department of social welfare but not the cost of any county infirmary or county hospital. However, the funds may be used to care for needy persons who have not established a legal settlement and who continue to be the responsibility of the entire county. The funds required to operate any county infirmary or county hospital in such county are to be raised by charging the cost of maintaining patients to the cities and townships, according to the residence of the patients.⁴⁴

Child Care and Social Welfare Funds

The state law requires the county treasurer to maintain a separate account for child care funds and a separate account for social welfare funds. These funds are to remain separate and apart from all other county funds.

The treasurer is required to deposit in the child care fund all money received from various sources for the foster care of children.

The board of supervisors, in its appropriations for the child care fund, is to distinguish between those sums to be used by the juvenile division of the probate court and those funds which may be used by the county department of social welfare.⁴⁵

The county treasurer is to deposit in the "social welfare fund:"

- (a) All money raised by the county for the use of the county department of social welfare;
- (b) All funds made available to that department by the state and federal governments;
- (c) All refunds and collections arising out of reimbursements to the county department and,
- (d) All other funds made available to the department.

Money in the child care and social welfare funds is to be kept separate from other county funds and used only for the purposes designated in the relevant state law. Disbursements are to be made on the order or warrant of the county department over the signature of persons designated by the social welfare board. The state department of social welfare may prescribe rules, procedures and controls with respect to both funds.⁴⁶

Charges Between Counties

If a county department of social welfare grants general relief or infirmity care to a poor person who has a settlement in another county of the state, or in a city operating a separate department, the relief and care granted are chargeable to the other county or the city, subject to conditions set forth in the statute.⁴⁷ Likewise, the conditions under which the county may recharge the county or city are also set forth.⁴⁸ If the settlement of a poor person cannot be ascertained, or is in another state or nation, the aid granted is generally at the expense of the county in which the person may be.⁴⁹

Notes to Chapter 7

- 1. MCL s. 400.1, MSA s. 16.401.
- 2. MCL s. 400.10, MSA s. 16.410.
- 3. MCL s. 400.14, MSA s. 16.414.
- 4. MCL s. 400.18, MSA s. 16.418.
- 5. Op. Atty. Gen. 1951-2, p. 319. July 25, 1951, No. 1445A.
- 6. MCL ss. 400.23, 400.25, MSA ss. 16.423, 16.425.
- 7. MCL s. 400.11, MSA s. 16.411.
- 8. MCL s. 400.18b, MSA s. 16.418(2).
- 9. MCL s. 400.45, MSA s. 16.445.
- 10. MCL s. 400.85, MSA s. 16.485.
- 11. MCL s. 400.46, MSA s. 16.446.

12. Op. Atty. Gen. 1947-48, pp. 410-411. January 5, 1948, No. 538.
13. MCL s. 400.46, MSA s. 16.446.
14. MCL s. 400.45, MSA s. 16.445.
15. MCL s. 400.47, MSA s. 16.447.
16. MCL s. 400.52, MSA s. 16.452.
17. MCL ss. 400.53-54, MSA ss. 16.453-454.
18. MCL s. 400.49, MSA s. 16.449.
19. Op. Atty. Gen., December 13, 1945, No. 0-4209.
20. MCL s. 400.45, MSA s. 16.445.
21. MCL s. 400.51, MSA s. 16.451.
22. MCL s. 400.45, MSA s. 16.445.
23. Op. Atty. Gen. 1952-54, pp. 214-215. September 9, 1953, No. 1694.
24. MCL s. 400.23, MSA s. 16.423.
25. *Ibid.*
26. MCL ss. 400.24-32, 400.56-57, MSA ss. 16.424-432, 16.456-457.
27. MCL s. 400.55, MSA s. 16.455.
28. *Ibid.*
29. MCL s. 400.55(b), MSA s. 16.455(3).
30. MCL s. 400.55(a), MSA s. 16.455(1), (2).
31. MCL s. 400.55, MSA s. 16.455.
32. MCL s. 400.58, MSA s. 16.458.
33. MCL s. 400.58(a), MSA 16.458(1).
34. MCL s. 400.58(b), MSA s. 16.458(2).
35. MCL s. 404.1, MSA s. 16.251.
36. MCL ss. 404.4-6, MSA ss. 16.254-6.
37. MCL s. 401.3, MSA s. 16.253.
38. MCL s. 712.A9, MSA s. 27.3178 (598.9).
39. MCL s. 712.A8, MSA s. 27.3178 (598.8).
40. MCL s. 400.1, MSA s. 16.401.
41. MCL s. 400.69, MSA s. 16.469.
42. MCL s. 400.70, MSA s. 16.470.
43. MCL s. 400.71, MSA s. 16.471.
44. MCL s. 400.72, MSA s. 16.472.
45. MCL s. 400.73, MSA s. 16.473.
46. *Ibid.*
47. MCL ss. 400.59, 59a-c, 400.72, MSA ss. 16.459, 16.459(1)-(3), 16.472.
48. MCL s. 400.71, MSA s. 16.471.
49. MCL s. 400.59, MSA s. 16.459.

CHAPTER 8

Agriculture and Conservation

Promotion of Agriculture

The legislature has authorized each county through its board of supervisors to cooperate with Michigan State University of Agriculture and Applied Science, and with any department or bureau of the United States government, to promote the agricultural interests of the county and to provide for agricultural extension work. The board of supervisors is authorized to appropriate money, or raise money by taxation for this purpose and may establish a farm bureau to act as the representative of the board and the county in all such cooperative work.

Subject to the approval of the state board of agriculture or its proper representatives, the board of supervisors may appoint a county agricultural agent and necessary assistants. They have the duty of promoting the agricultural interests of the county. The compensation and expenses of any person so employed, or such portion as may be agreed upon between the county and Michigan State University, or a federal department or bureau, shall be fixed and provided for by the board of supervisors.¹ The county agent is also designated the "official cream tester" for the county and has powers and duties provided by law for that office.²

The board of supervisors of any county may appropriate from the general fund a sum not to exceed \$2,000 in any one year to advertise the agricultural advantages of the county or the state, or to maintain an exhibition of the products or industries of the county at any domestic or foreign exposition for the purpose of attracting immigrants, trade, or tourists. The board may appropriate all or a part of such funds to a non-profit legal association, development bureau, or board organized under Michigan law, engaged in advertising the advantages of immigration and trade. While the sum not exceeding \$2,000 may be appropriated from the general fund, it may also be raised by a special tax on the taxable property within the county, but the tax may not exceed five cents on each hundred dollars of taxable property.³

Public Agricultural Market

The board of supervisors has been authorized, subject to referendum, to construct or purchase a building for a public agricultural

produce market.⁴ The purchase of a site for the building and of equipment within it is also authorized. The market may be established in conjunction with any village or city in such case, but the county board may not participate to the extent of more than 60 per cent of the cost of construction and operation. The authority for establishing a public agricultural produce market is not effective until approved by a majority of the electors of the county voting on the matter at a general or special election called for that purpose. If the authority is approved, the board of supervisors may spend the necessary amount for constructing, purchasing or equipping the market, but the sum must not exceed one mill on each dollar of assessed valuation of the county. The board may borrow the amount on the faith and credit of the county and issue bonds for it.

When the market is established, the board of supervisors is to control it and may make regulations for its use and operation. The board may employ a market master and other necessary employees, and the salary is to be paid from the general fund. If the market is established in conjunction with a city or village, it is to be controlled by a joint committee. The committee is to have five members who serve at the pleasure of the appointing authority. Three members are appointed by the party having the greatest investment and the other two members by the remaining party or parties. The joint committee may employ a market master and other employees. The expenses and profits shall be divided according to the ratio of investment.

The state law provides that any markets existing when an amending act became effective on September 18, 1952, and which are participated in by any county and any city or village, may, by resolution of the interested governing bodies, be declared to be operating under the relevant statute. Moreover, such markets may, by resolution carrying a two-thirds vote of the elected members of the respective governing bodies, be sold, exchanged or abandoned, in which event the proceeds are to be divided according to the ratio of investment.

County Fairs; Fair Boards

The board of supervisors in any county owning its own fair grounds has been authorized by the state legislature to make appropriations for the construction and maintenance of buildings, fences and driveways on the fair grounds.⁵ The Attorney General has ruled that a 99-year lease does not provide ownership within the meaning of this provision.⁶ Likewise, he has ruled that, whenever the county holds the title, the board of supervisors, in making appropriations for

the construction and maintenance of buildings on a county fair grounds, is limited by the provisions of the act of 1911 relating to the financing of county buildings and bridges.⁷ This will be described in Chapter 13.

The legislature also has provided that, in any county which holds title to property used as an agricultural fair, the board of supervisors may take over the management and control of the fair and operate it under such rules and regulations as the board may determine.⁸ For such purposes, the board of supervisors may appoint a committee of its members or other residents of the county to be known as a fair board. The fair board is to have control of the operation and management of the fair.⁹ A member of the board of supervisors may receive compensation for serving as a member of the county fair board. The compensation is the same as for attending sessions of the board of supervisors. (See Chapter 3). The compensation is payable without regard to the limitations on the number of days for which the member may be compensated.¹⁰

The board of supervisors is also authorized to make such rules and regulations governing the control and management of the fair as, in their judgment, may be necessary and proper to carry out the purposes for which the fair is being held. The board of supervisors may decide what, if any, admission shall be charged and may raise by tax not more than one-tenth of one mill on the assessment role of the county for the purpose of paying the necessary expenses of the fair.¹¹

Borrowing, Agricultural Fair Grounds

The board of supervisors is authorized to borrow not more than \$75,000 in order to buy land and erect or improve buildings for the purpose of holding agricultural fairs and exhibitions, provided the question is submitted to the electors and approved by three-fifths of the electors voting on the proposition. Notice is to be given in the usual manner, and the board of supervisors is to prescribe the form in which the question is stated. The election may be general or special.¹²

County Forests; Forestry Commission

The legislature has authorized any county to use lands for forestry purposes. This applies to lands already in possession and in addition the county may acquire lands for such purpose by purchase, gift or inheritance. The lands used for forestry purposes may be within or without the territorial limits of the county. The legislature has

also authorized the county to receive, and expend or hold in trust, gifts of money or personal property for forestry purposes.¹³

The board of supervisors of any county desiring to proceed under the above authorization may appoint a forestry commission of three members, only one of whom may be a member of the board of supervisors. The members are to serve without compensation. Initially, the terms of office are to be for four, three and two years. Thereafter each term is for four years. The forestry commission is to supervise and manage all county lands devoted to forestry, to make an annual report to the county board of supervisors and the Department of Conservation, and to cooperate with that department in the establishment and maintenance of public forests.¹⁴

The board of supervisors may also appropriate funds to be used by the forestry commission in fulfilling its duties. However, if the board desires to spend, in any one year, an amount in excess of one-tenth of one mill of the assessed valuation of the county, or an amount in excess of \$5,000 it must, prior to such appropriation obtain the approval of three-fifths of the electors of the county in a general or special election. The county financial officer must account separately for revenues and expenditures from funds appropriated for the forestry commission. Disbursements may be made with the approval of two members of the commission. Income from forestry lands is to be paid into the general funds of the county.¹⁵

Normal Water Level of Inland Lakes

The legislature has provided a method for determining the normal height and level of the waters in an inland lake situated in a county, if, in the judgment of the board of supervisors or the conservation commission, this is considered necessary to promote the health, welfare or safety of the public and the conservation of the natural resources of the state.¹⁶

The board of supervisors may act separately from the conservation commission by determining the expediency of establishing the normal lake level and by directing the prosecuting attorney to proceed under the law. The board is also empowered to acquire any dam which affects the water level of an inland lake, or to construct a dam necessary for maintaining the normal water level. The statute outlines procedure for this purpose.¹⁷

Navigable Streams

The board of supervisors has been granted certain powers relating to navigable streams. In general, this power deals with cleaning the stream and the construction of dams and bridges. (This is only one

situation in which the board has power relating to bridges. Other instances will be discussed in Chapters 9 and 13.)

The board of supervisors has power to provide for the removal of any obstruction arising from the erection of booms, or collecting of logs or rafts in such streams by any individual, and the board may direct the time for their removal. To this end, the board may make regulations, impose penalties, and authorize the sheriff to carry the regulations into effect.¹⁸

Any person or corporation wishing to construct a dam across such a stream, must first present a petition to the board of supervisors, either directly or by filing with the county clerk, asking permission and stating the purpose and size of the dam, as well as other information required by the statute. The law sets forth the procedure by which the petitioner is to give public notice of his plans. After this has been completed the board of supervisors is to give the petitioner a hearing, and grant or refuse the petition. However, this authority of the board does not give it power to grant any person or corporation the right to injure the lands of any person by constructing the dam.¹⁹

Likewise, any person, township, or corporation, wishing to construct a bridge across any stream at a point where it is navigable for boats of 15 tons burden or more, must first apply to the board of supervisors by petition. The procedure is similar to that described for constructing dams. In addition, the board of supervisors has power to make general rules and regulations as to the kind of bridges, and the mode of constructing them, over any stream in the county which is not navigable for vessels of 15 tons burden. The board may grant permission for building bridges, without notice or hearing, in such manner as it judges proper with reference to the passage of boats, rafts and timber.²⁰

County Parks; Board of Park Trustees

The legislature has authorized the board of supervisors, acting by a two-thirds vote of its members, to purchase, acquire by condemnation, or accept as a gift, real estate for purposes of public parks, zoological gardens, or airports and landing strips, within the county, or within an adjoining county. The board is also authorized to make appropriations covering the costs involved. Likewise, appropriations may be made for the improvement and maintenance of such property. In addition, the board may appropriate funds as contributions to the improvement or maintenance of public parks or the other designated properties, owned or held in trust by any township, city or village within the county, or by any adjoining

county, or by two or more adjoining counties.²¹ In any case, appropriations can be made only for the ensuing year, and thus property cannot be purchased on the installment basis.²²

The statute authorizing such appropriations expressly interprets "parks" to include "boulevards and highways to be laid out as boulevards by the county authority" or, by the municipality involved.²³

The board of supervisors may raise the money necessary for these purposes by a tax on the taxable property within the county in the manner provided by law for other county taxes. In counties having an assessed valuation of \$8 million or more, the tax may be levied in an amount not exceeding one-fourth of one mill in any one year. In other counties the amount of the tax may not exceed \$2,000.²⁴

Where the board of supervisors has decided to purchase, condemn or accept lands for public parks, and has appropriated funds for that purpose, the board must establish a board of county park trustees.²⁵ The board, which is to have three members, is responsible for the management, control and expenditure of funds; it is to hold title to the property in trust for the county; and it is to supervise the improvement of the property as authorized by the board of supervisors. The trustees also have the care and control of the property and may make rules and regulations, subject to the approval of the board of supervisors and subject to a procedure for giving notice by publication and posting, as specified in the statute. The trustees are to report to the board of supervisors at the October session on the condition of the property and the expenditure of funds.

In a county operating under the county road system (to be described in the next chapter) the powers and duties of the board of park trustees are to be performed by the board of county road commissioners.

Notes to Chapter 8

1. MCL s. 285.51, MSA s. 12.91.
2. MCL ss. 288.181-4, MSA ss. 12.631-4.
3. MCL s. 46.161, MSA s. 5.461.
4. MCL ss. 46.102-4, MSA ss. 5.402-4.
5. MCL s. 46.141, MSA s. 5.441.
6. Op. Atty. Gen. 1921-22, p. 272. January 12, 1922.
7. Op. Atty. Gen. 1930-32, pp. 269-270. July 14, 1931.
8. MCL s. 46.151, MSA s. 5.451.
9. MCL s. 46.152, MSA s. 5.452.
10. MCL s. 46.30, MSA s. 5.353.
11. MCL s. 46.153, MSA s. 5.453.

12. MCL s. 46.111, MSA s. 5.411.
13. MCL s. 320.202, MSA s. 13.282.
14. MCL ss. 320.203-4, MSA ss. 13.283-4.
15. MCL ss. 320.208-10, MSA ss. 13.288-90.
16. MCL s. 281.101, MSA s. 11.221.
17. MCL s. 281.104, MSA s. 11.224.
18. MCL s. 46.21, MSA s. 5.344.
19. MCL s. 46.22, MSA s. 5.345.
20. MCL ss. 46.23-4, MSA ss. 5.346-7.
21. MCL ss. 123.61-3, MSA ss. 5.2431-3.
22. Op. Atty. Gen. 1956, May 10, 1956, No. 2542.
23. MCL s. 123.65, MSA s. 5.2435.
24. MCL s. 123.64, MSA s. 5.2434.
25. MCL s. 123.66, MSA s. 5.2436.

CHAPTER 9

Roads and Bridges

County Road System

Section 26 of Article VIII of the Michigan Constitution provides that the legislature may by general law (1) provide for the laying out, construction, improvement and maintenance of highways, bridges and culverts by the state, by the counties and townships, and by road districts; (2) authorize counties and districts to take charge and control of any highway within their limits for such purposes; (3) prescribe the powers and duties of boards of supervisors in relation to highways, bridges and culverts; (4) provide for county and district road commissioners and prescribe their powers and duties; (5) abolish the powers and duties of township commissioners of highways, and (6) provide for elections on the adoption of county road systems. The Constitution prescribes further that the tax raised by the counties for road purposes shall not exceed in any one year five dollars on each one thousand dollars of assessed valuation for the preceding year.

The legislature has exercised its authority under the above section of the Constitution by the enactment of various statutes, the principal one of which is the General Highway Law.

The General Highway Law sets forth the manner by which a county may adopt the county road system.¹ The matter may be initiated by a majority vote of the members of the board of supervisors, or by a petition of not less than 10 per cent of the resident freeholders of each of the several organized townships, incorporated villages and cities of the county. The statute provides for the submission of the question to the electors, and if a majority of the votes cast favor the adoption of the system, the provision of the act are operative.

Board of County Road Commissioners, Organization

The General Highway Law provides that in any county where the county road system has been adopted, a board of county road commissioners, consisting of three members is, with two possible exceptions, to be elected at the general November election. One exception is that, in the first instance, the commissioners are to be either appointed by the board of supervisors or elected at a general or special election, as the board of supervisors may decide. The

second exception is that the election of the commissioners is not mandatory in any county which contains 12 or more surveyed townships (either entire or fractional). In such a county the board of supervisors may, by a majority vote of its members, appoint the road commissioners. A commissioner so appointed may not be removed from office without written notice of charges against him and the opportunity of a hearing before the board of supervisors.² The board of supervisors has power to change the method of selecting the road commissioners.³ Any person appointed or elected county road commissioner is required to take the constitutional oath of office and to give a bond in such amount as the board of supervisors shall determine. The bond should go to the county.⁴

The law provides that a person may not be a member of the board of supervisors and a county road commissioner at the same time.⁵

The term of office of the first commissioners elected or appointed commences immediately upon filing the required oath of office and bond and continues to January 1 of the next odd year. The successor to each such commissioner is to be elected at the next general November election. Their terms are for two, four and six years, running from January 1. Thereafter one commissioner is elected or appointed biennially for the full term of six years. A vacancy in the office of county road commissioner is to be filled by appointment of the board of supervisors. Each commissioner holds office until his successor is elected or appointed and qualified. The board of supervisors is empowered to fix the compensation of the commissioners.

The law provides that the board of county road commissioners is a body corporate, with right to use a common seal. It may sue and be sued in the name of the board of county road commissioners. A majority of the members constitutes a quorum for the transaction of business, but a smaller number may adjourn from time to time. The board may adopt rules and regulations. The law expressly provides that the board of county road commissioners shall act as "an administrative board only."⁶ The county clerk acts as clerk of the board of county road commissioners.

No member of the board, or its clerk, may be pecuniarily interested, directly or indirectly, in any contract, work or purchase, undertaken by the board. However, this does not prevent the purchase of land for a road, from either a member or the clerk.⁷ The Attorney General has ruled that a road commissioner may not sell bonds or insurance to the county.⁸

Board of County Road Commissioners, Powers and Duties

The General Highway Law provides that the board of county road commissioners may lay out new roads, and that it may change the width or location of any road over which it takes jurisdiction.⁹ The law gives the board power to purchase or condemn necessary property, subject to specified conditions.¹⁰

The state law requires the board of county road commissioners in each county to appoint a superintendent for the supervision of all road building operations. The superintendent must be skilled in road construction but he need not be an engineer.¹¹ The board, either alone or in conjunction with an adjoining county or counties, may engage a highway engineer. The engineer is to make surveys, prepare plans for roads, bridges, and culverts, and exercise such general supervision over constructions as will insure that the plans are followed.¹² The board may also engage other employees and may acquire machines and materials necessary or convenient to carry out the work.

The board of county road commissioners may contract with a township board for the establishment and maintenance of roads within the township.¹³ In all counties of Michigan the control of roads by townships has terminated, and all roads are under the supervision of the counties, cities or the state.

The funds under the control of the county road commissioners are frequently restricted in their use. Funds received from certain sources may be earmarked for specified highways, or for particular functions, such as snow removal. In other instances, the use of funds for the costs of administration is expressly authorized. Such costs include, among other things, the official expenses of the road commissioner. The legal responsibility for auditing claims for these expenses and approving them for payment rests with the board of supervisors or the board of county auditors.¹⁴ The board of county road commissioners is to present a complete statement of accounts to the board of supervisors at the latter's annual meeting. The accounts are to be audited by the county board of auditors or, if none, by the board of supervisors or by a committee appointed by the board of supervisors.¹⁵

Inter-County Highways

The boards of supervisors of any two or more counties may arrange, by contract, for the planning of an inter-county system of super-highways and limited access highways. Such action requires the two-thirds vote of the board of supervisors of each county. The

term of the contract is limited to five years but it may be renewed for additional terms of not more than five years.¹⁶

When two or more counties proceed under this authorization, they are required to establish an inter-county highway commission. This is to be composed of the state highway commissioner and six members from each county. Each county delegation is to consist of the three county road commissioners, the chairman of the board of supervisors and two members selected by the board of supervisors from its membership. If the board of supervisors has a roads and bridges committee, the chairman of that committee is to be one of the selected members. If there is a regional planning commission, as authorized by state law, its director is to be an ex-officio member of the inter-county highway commission. This commission is to prepare the inter-county highway plan. In general, the commission may select officers from its membership and may engage engineers, attorneys, and other agents and employees. Members of the commission are entitled to actual expenses necessarily incurred in performance of their duties.¹⁷

Each participating county is to pay into the treasury of the commission sums agreed upon under the inter-county contract as well as additional sums approved by a majority of each board of supervisors. The commission is to appoint the treasurer of one of the participating counties to handle the funds.¹⁸

The board of supervisors of each participating county is empowered to pass all ordinances which are necessary and proper for the execution of the foregoing powers.¹⁹

Borrowing and Raising Funds for Highway Purposes

The state laws contain several provisions relating to the financial aspects of establishing and maintaining roads in the county. Some of these provisions tend to be general in character while others are particular in scope. One section of the General Highway Law provides that the board of supervisors may not borrow or raise by tax more than \$1,000 for the purposes of constructing or repairing public buildings, highways or bridges unless authorized by a majority of the electors of the county voting on the matter as provided by law. This section of the law also authorizes the board of supervisors to provide for the payment of any loan made by the board, by tax upon the county, and payment shall in all cases be within 20 years from the date of the loan.²⁰ Other statutory provisions, described below, authorize the raising of funds by taxes or borrowing under somewhat different conditions.

County Highway Tax

The imposition of a county highway tax involves both the board of county road commissioners and the board of supervisors. Prior to the October meeting of the supervisors, the board of road commissioners is to complete surveys, plans and estimates and determine the amount of tax which in its judgment should be raised. In the determination, the roads and the amounts to be spent on each road are to be itemized.

The state law sets limits on the amount of tax. The limits vary according to total assessed valuation. The tax may not exceed \$5.00 per \$1,000 valuation if the total valuation does not exceed \$20,000,000; \$4.00 per \$1,000 valuation if the total is between \$20,000,000 and \$40,000,000; \$3.00 per \$1,000 valuation if the total is between \$40,000,000 and \$100,000,000; \$2.00 per \$1,000 valuation if the total is between \$100,000,000 and \$300,000,000; and \$1.00 per \$1,000 valuation if the total exceeds \$300,000,000.²¹

If a majority of the board of supervisors agree with the determination of the board of county road commissioners, the tax is to be apportioned among the several townships and cities according to their equalized valuation. If the board of supervisors does not approve the determination of the road commissioners, then the board of supervisors may decide upon the amount of tax, and it "may allow or reject in whole or in part any or all of the items for the sections of the roads thus submitted for its consideration."²² In this case, the road commissioners may spend money only on the roads specified. However, the General Highway Law provides that it is "the duty of the board of supervisors to raise a sufficient tax to keep any county roads or bridges already built in reasonable repair, and in condition reasonably safe and fit for public travel."

The Attorney General has ruled that the board of supervisors cannot levy a county highway tax without prior action by the board of county road commissioners.²³ He has also ruled that power of the board of supervisors is limited by the Constitutional and statutory provisions relating to the financing of bridges and public buildings, and to the powers of the tax allocation board.²⁴

The General Highway Law also contains a section prescribing that the board of supervisors, at its October session, is to apportion not only the amount of money to be raised for county purposes, but also the amount of the state tax and the county indebtedness to the state.²⁵ This provision, and others setting forth conditions and procedure, are almost identical to those set forth in the General Tax Law, which will be discussed in Chapter 14.

The General Highway Law also provides that when there is a surplus in the general fund of a county operating under the county road system, the board of supervisors may, by resolution, transfer a part of such surplus to the county road fund, under the supervision of the board of county road commissioners. However, no money raised by general taxes levied on the real and personal property of the county may be diverted.²⁶ The Attorney General has ruled that a deficit in the county road fund caused by a wrongful transfer to the general fund, cannot be made up by a tax levied for such purpose.²⁷

State Distributions

The Highway Finance Act provides that taxes on gasoline and other motor fuels used on the highways and certain taxes on commercial vehicles are to be paid into the motor vehicle highway fund. Further, the money in this fund, after payment of expenses, is to be apportioned among the state highway department, the several county road commissions and the incorporated cities and villages.²⁸ The statutory provisions relating to the distribution of the highway funds are set forth mainly in the Classification of Roads Act, which went into effect on July 1, 1957. This statute continues in effect several provisions of previous laws. For instance, the Act provides that the board of county road commissioners is to complete the taking over as county roads of all roads, streets and alleys lying outside the limits of incorporated cities and villages and dedicated to the public in recorded plots of ground.²⁹

The Classification of Roads Act sets forth the manner in which the motor vehicle highway fund is to be apportioned among the several county road commissions, the state highway department, and the incorporated cities and villages of the state. The amount for the counties is to be 35 per cent of the total. Various rules of distribution are set forth in the statute. The factors on which distribution is based include, among other things, the tax collections within the county during the preceding four calendar quarters and the ratio of road mileage in the county local road system of each county to that of all counties.³⁰

Borrowing for Highway Construction

The state law empowers a county, under specified conditions, to borrow money and issue bonds for purposes of constructing authorized highways. The bonds may be issued only upon adoption of a resolution by a majority of the board of supervisors and the written recommendation or approval of the board of county road

commissioners. The resolution of the supervisors must describe briefly the contemplated highway project, the estimate cost, and the amount, interest rate, maturity date and form of the bonds. The resolution must also contain an irrevocable appropriation providing for the payment of the principal and interest from the money received or to be received by the board of county road commissioners from the state motor vehicle highway fund, except for money previously pledged. The total amount of bonds that may be issued by any county under this law may not result in the annual principal and interest requirements exceeding 20 per cent of the money received by the board of county road commissioners from the motor vehicle highway fund during the fiscal year next preceding the issuance of the bonds.³¹

The board of road commissioners is also authorized to borrow money in anticipation of future revenues derived from state collected taxes, but the amount may not exceed that previously approved by the board of supervisors. Moreover, the prior permission of the municipal finance commission is also required.³²

Bridges, Financing

Section 10 of Article VIII of the Constitution provides that a county, without approval of the electors, may not in any year raise by taxation or borrowing more than either \$1,000 or one-tenth of one mill on the assessed valuation for the construction or repair of public buildings or bridges. This limitation has also been set forth in a statutory enactment.³³ The statute also prescribes the procedure for presenting the question to the electors.

Authorization of Township Financing

The board of supervisors may authorize any township within the county, by a vote of the electors of the township, to borrow or raise by tax upon the township any sum not exceeding \$10,000 in any township in any one year for the purpose of building or repairing roads or bridges in the township or in which the township may be interested. The board of supervisors is also authorized to prescribe the time for repayment of the loan, but it must be within 20 years. The authorization may extend to more than one township. If any road or bridge is situated partly in one township and partly in another, or on the line between townships, or in case any township has any particular local interest in the construction or repair of any bridge, the board of supervisors may determine, the relative proportion which each township shall contribute. The amount so apportioned to the several townships is to be assessed and collected in the same manner as other township taxes.³⁴

This authorization is also set forth in another statute which requires a two-thirds vote of the members of the board of supervisors and which limits the term of payment to 15 years.³⁵

Both provisions probably have limited application because townships now have little or no supervision of roads.

Highway Safety; Lighting, Beasts, Weeds, Safety Organizations

The board of county road commissioners is authorized to provide for the lighting of roads, highways and bridges which are under its jurisdiction and are located outside of the limits of incorporated cities and villages. The law also provides that the board of supervisors has the duty of raising a sum which, together with other sums available for this purpose, will provide lighting for which the facilities have, under an existing contract, been previously installed and operated.³⁶

The General Highway Law authorizes the board of supervisors to make rules and regulations relating to the destruction of wild beasts, thistles and other noxious weeds within the county. The law also authorizes the board to provide means for enforcing these rules and regulations.³⁷ The Attorney General has ruled that counties may pay bounties for the destruction of noxious animals.³⁸

The legislature has also authorized the board of supervisors of any county to appoint, for each township, a competent person to be known as the "Commissioner of Noxious Weeds." He is to hold office for a two-year term and to receive compensation fixed by the board, at a maximum of \$4.00 per day for each full day necessary in the performance of his duty. The duties of the commissioners are set forth in the statute.³⁹

The state legislature has authorized the board of supervisors of any county to create a county traffic safety organization to cooperate with other governmental units in the solution of traffic safety problems in the county. For this purpose, the board may appropriate funds and prescribe rules and regulations.⁴⁰

Port Districts; Navigational Facilities, Ferries

The state law authorizes the establishment of port districts within a county for the acquisition and operation of harbor improvements and terminal facilities. Establishment of a port district involves approval by the voters of the county. The question is to be submitted by the board of supervisors on its own discretion or upon petition of 10 per cent of the electors, based upon the vote at the last county election.⁴¹ A port district is to be under the control and management

of a port commission, appointed by the governor.⁴² Its powers and duties are set forth in the statute.⁴³

A 1952 statute grants the county, as well as other political subdivisions, power to adopt certain rules and ordinances relating to harbors, channels and other navigational facilities under its control.⁴⁴

The board of supervisors is authorized to acquire ferry services and related equipment as part of the county highway system. However, this requires approval of two-thirds of the members. The board may from time to time make appropriations for the purchase, operation and maintenance of the ferry services. The services are to be granted and assigned to the board of county road commissioners. The latter may, among other things, fix the tolls to be charged.⁴⁵

Notes to Chapter 9

1. MCL s. 224.1-3, MSA s. 9.101-3.
2. MCL s. 224.6, MSA s. 9.106.
3. *Elbreck v. Buck*. (1950) 326 M 208, 40 NW (2) 122.
4. Op. Atty. Gen. 1947-48, pp. 704-5. June 11, 1948, No. 783.
5. MCL s. 224.7, MSA s. 9.107.
6. MCL s. 224.8-9, MSA s. 9.108-9.
7. MCL s. 224.10, MSA s. 9.110.
8. Op. Atty. Gen. 1930-40, pp. 351-3. December 13, 1939.
9. MCL s. 224.11, MSA s. 9.111.
10. MCL ss. 224.11-16, MSA ss. 9.111-116.
11. MCL s. 220.9, MSA s. 9.109.
12. MCL s. 224.10, MSA s. 9.110.
13. MCL s. 247.351, MSA s. 9.195 (1).
14. Op. Atty. Gen. 1956, p. 548-552. September 18, 1956, No. 2684 A.
15. MCL s. 224.25, MSA s. 9.125.
16. MCL s. 252.1, MSA s. 9.1081.
17. MCL ss. 252.3-6, MSA ss. 9.1083-6.
18. MCL ss. 252.7-8, MSA ss. 9.1087-8.
19. MCL s. 252.11, MSA s. 9.1091.
20. MCL s. 236.1, MSA s. 9.440.
21. MCL s. 224.20, MSA s. 9.120.
22. *Ibid.*
23. Op. Atty. Gen. 1951-52, pp. 112-4. November 8, 1950, No. 1311.
24. Op. Atty. Gen. 1945-46, pp. 536-8. December 7, 1945, No. 0-4081; 1955, pp. 635-6; November 16, 1955, No. 2093.
25. MCL s. 234.2, MSA s. 9.393.
26. MCL s. 247.121, MSA s. 9.171.
27. Op. Atty. Gen. 1945-46. April 23, 1946, No. 0-4569.
28. MCL ss. 207.251-4, MSA ss. 9.1098 (1)-(4).

29. MCL s. 247.669, MSA s. 9.1097 (19).
30. MCL ss. 247.660-2, MSA ss. 9.1097 (10)-(12).
31. MCL s. 247.668 c, MSA s. 9.1097 (18c).
32. MCL s. 141.251, MSA s. 9.130 (1).
33. MCL s. 141.71, MSA s. 5.2301.
34. MCL s. 236.1, MSA s. 9.440.
35. MCL s. 46.11, par. 15, MSA s. 5.331, par. 15.
36. MCL s. 141.261, MSA s. 5.2491.
37. MCL s. 236.1, MSA s. 9.440.
38. Op. Atty. Gen. 1923-24, pp. 234-5. October 26, 1923.
39. MCL ss. 247.61-70, MSA ss. 9.631 (1)-(10).
40. MCL s. 257.629 (a), MSA s. 9.2329 (1).
41. MCL ss. 120.1-2, MSA ss. 5.2151-2.
42. MCL s. 120.9, MSA s. 5.2159.
43. MCL ss. 120.13-34, MSA ss. 5.2163-84.
44. MCL ss. 281.541-2, MSA ss. 5.2768 (11)-(12).
45. MCL ss. 255.51-3, MSA ss. 9.1381 (1)-(3).

CHAPTER 10

Drains and Public Works

County Drain Commissioner

The powers and duties of the board of supervisors relating to county drains are set forth mainly in the Drain Code of 1956.¹ This statute provides for a county drain commissioner, who has jurisdiction over all drains within the county.² Thus, the activity of the board of supervisors in this field is largely a matter of the relationships between the board and the county drain commissioner. In a county having less than 12,000 population, the board of supervisors, acting by resolution of a majority of its members, may abolish the office of drain commissioner and transfer the powers and duties of that office to the board of county road commissioners. In such a case, of course, the actions of the board of supervisors in respect of drains would mainly involve the relationships with the board of road commissioners.

The drain commissioner, when the office exists, is elected at the biennial November election for a two-year term beginning the first of the next January. However, an incumbent commissioner serves until his successor is elected and qualified. Qualification includes taking the constitutional oath and supplying a bond in the amount of \$5,000 or such other amount as the board of supervisors may fix.³ The drain commissioner is to receive an annual salary fixed by the board of supervisors. He is also to receive actual necessary expenses, including those for travel and for clerical help. The allowance is to be made by the board of county auditors, or, if none, by the board of supervisors. The amounts are to be paid by the county, and they constitute full compensation for services and expenses.⁴ The drain commissioner may not be paid extra compensation for such matters as surveying areas for proposed drains or inspecting completed drains.⁵ The drain commissioner may appoint a deputy or deputies, as the board of supervisors may approve, and he may revoke such appointment at pleasure. Each deputy is to receive salary or compensation as allowed by the board of supervisors. A deputy is also to receive travelling expenses actually and necessarily spent in discharge of prescribed duties.⁶ The board of supervisors may employ an engineer to perform the services required by the Drain Code to be performed by an engineer or surveyor.⁷

The drain commissioner is required by law to keep a full financial statement and a procedural record of each drainage district.⁸ Likewise, the commissioner must make a report to the board of supervisors at the October session each year, setting forth, among other things, the drainage districts laid out and the drains constructed. He is also to furnish the board a financial statement for each district.⁹

County Drainage Districts

The legislation relating to drains deals largely with drainage districts and tends to assume the legal character of such districts. In general, a drainage district exists for only limited purposes, but within its limits it resembles a public corporation and is a distinct entity which may be sued in its own name.¹⁰

The Drain Code sets forth various procedural steps to be followed in the construction and maintenance of a drain. First of all, the Code provides that before a commissioner takes any action on a drain, an application must be filed with him to lay out and designate a drainage district. The law specifies the number of signers and other requirements of the application. The board of supervisors may, by resolution, instruct the drain commissioner to refuse any application not accompanied by a cash deposit, sufficient to cover the preliminary costs. The deposit is to be returned if the drain is completed.¹¹ Upon receipt of an application, the commissioner is to have a survey of the drainage area made by a competent surveyor or engineer. However, in any county having a board of county auditors, the approval of such board is required. If the commissioner, on the basis of the survey, determines that the proposed drain is practical, he is to lay out a drainage district. He is also to obtain from the county treasurer a statement of the taxes and special assessments on the lands in the district for the three preceding years, and if one-third or more of the land is tax delinquent, no further action may be taken.¹²

County Drains

When a drainage district has been established, a petition may be filed with the commissioner for the construction of the drain. Various procedural steps are prescribed by law. When a petition has been filed, the commissioner is to appoint a board of determination, composed of three disinterested freeholders, to apportion benefits within the district. If the commissioner is disqualified by interest, the appointment is to be made by the chairman of the board of supervisors.¹³ The manner in which the board of determination is to proceed is spelled out in the Drain Code. The statute also provides for

receiving releases of right of way, for condemning property if necessary, and other similar matters.¹⁴ These further procedural steps do not involve the board of supervisors directly except in certain circumstances of a special character. For instance, if special assessment taxes for a drain, fully or partly completed, have not been assessed on the tax roll of any affected municipality, an owner of land assessed for benefits may apply to the drain commissioner and the latter is to present the matter to the board of supervisors. In such a case, the board of supervisors is required to spread the taxes on the assessment roll.¹⁵

Intercounty Drainage Districts

The law permits the establishment of intercounty districts for proposed drains which affect more than one county.¹⁶ The procedure for establishing such a district does not directly involve the board of supervisors. The statutory provisions relating to the construction of intercounty drains likewise do not directly involve the board of supervisors.¹⁷

Benefits to County Highways

In apportioning the benefits from a drain, the drain commissioner may apportion a percentage of the cost to any highway under the control of the county or district road commissioners for the benefits and improvement to the highway. The board of supervisors at its October session is to make provision by assessment of the amounts apportioned against any such highway.¹⁸ The Attorney General has ruled that the drain assessments charged against county highways are to be paid by the county at large rather than from the fund of the road commission.¹⁹

Bids and Contracts

The county drain commissioner is authorized to receive bids and to let contracts for the construction of drains, subject to procedures and conditions outlined in the Drain Code. If the county has a board of auditors, the board's approval is necessary for contracts relating to county drains but not intercounty drains. The board of county road commissioners, when authorized by a committee of supervisors appointed by the board of supervisors, may bid for the construction or improvement of drains within the county, but the bid is not to be accepted unless it is at least 15 per cent lower than any other bid tendered.²⁰

Drainage District Bonds

Section 15A of Article VIII of the Michigan Constitution provides that any drainage district, duly established, may issue bonds for

drainage purposes within the district. In such a case, the district rather than the county is the obligor on its bonds.²¹ Moreover, the Drain Code authorizes the drain commissioner to borrow money in anticipation of installment payments and to issue bonds of the drainage districts as security.²²

The power of the board of supervisors to pledge the full faith and credit of the county for the prompt payment of principal and interest on bonds issued under the Drain Code is subject to certain limitations. The legislature has granted the power only for counties having a population of 150,000 or more at the last decennial census, and exercise of the power requires a resolution adopted by a majority of the members of the board.²³

Revolving Funds for Drains

The board of supervisors, at its October session, is to appropriate funds for a revolving fund as necessary for certain purposes.²⁴ The first appropriation is limited to drain funds held by the county treasurer. Thereafter the revenue is to be collected by general taxation. The revolving drain fund may be used to pay the engineer or surveyor for services in laying out a drainage district; to pay for services leading to the entry of the final order of determination establishing a drain; to pay members of boards of determination for services performed; and to pay for necessary repairs on old drains.²⁵

Drains Assessed Against the Whole County

One chapter of the Drain Code permits the cost of "intracounty" drains, which are necessary for the public health, to be assessed against the whole county.²⁶ Action under the statute is initiated by a petition signed by two or more of the governmental units such as counties, cities, villages, townships, or metropolitan districts, which constitute "public corporations" for the purpose of the statute.

For each such project petitioned there is to be a drainage board of three members, including the county drain commissioner and the chairman of the board of supervisors. The third member is to be the chairman of the board of county auditors, or, if no such board, then the chairman of the finance committee of the board of supervisors. If neither of these two offices exist, the chairman of the board of supervisors is to select a member of that board. The chairman and any member of the board of supervisors are to receive compensation and mileage as provided for members of the board of supervisors.²⁷ (See Chapter 3). The powers and duties of the drainage board are set forth in the statute.²⁸

Water Management District

The Drain Code also provides for the establishment of a water management district, comprising all or a part of three or more contiguous counties within a single drainage basin, provided drainage or flood control within the district is necessary for the public health, safety or welfare.²⁹

The statute authorizes a water management commission for such a district. The commission is to consist of the drain commissioner of each county, a representative of each county appointed by the board of supervisors, a representative of each city or village within the district (with additional representatives for cities or villages having more than 10,000 population), a director of a soil conservation district within the water management district, and the director of agriculture. The director of agriculture serves as chairman of the commission.³⁰

The Drain Code also provides for a water management board, composed of resident property owners of the district.

Procedures relating to meetings of the commission and the board are set forth in the Code.³¹ Likewise, the methods of initiating projects, securing rights of way, contracting, apportioning costs, assessing taxes, issuing bonds, and selling surplus water are set forth in the law.³² The Code also authorizes subdistricts benefitting one or more local units (or "public corporations").³³ Likewise, a district in one or more contiguous counties lying within an interstate river basin is also authorized under certain conditions.³⁴

Power to Extend Payment of Drain Taxes

The board of supervisors may extend the time for payment of special drain taxes, or taxes assessed at large in townships, cities or villages for the construction of county or intercounty drains under the General Drain Law of 1923, as amended. The power applies where bonds have been issued in anticipation of drain taxes, and the exercise of the power is subject to conditions set forth in the statute.³⁵

The extension of drain taxes is also dealt with in a 1953 statute. This law authorizes the board of supervisors to extend the time for payment, under specified conditions, if an extension is requested. The authority relates to lands assessed since 1945 for special drain taxes, or to any township, city or village assessed at large for special drain taxes. The taxes must have been for county drains and have been assessed in only one installment. The board of supervisors is authorized to extend the time for the payment of such drain taxes

to no more than seven yearly installments; the procedures for making payments are described in the statute. The board is further authorized to assume on behalf of the county the payment of any drainage district bonds issued in anticipation of the collection of the taxes.³⁶

The action of the board of supervisors in extending the collection of such drain taxes requires a resolution by two-thirds of the members of the board. The installments against properties and against political subdivisions are to be in the same proportion as previously assessed, together with interest on an installment until due, as provided for in the General Drain Law enacted in 1923.³⁷

In connection with the assumption of liability on bonds, the board of supervisors is authorized, and is to agree in the resolution of extension, to assume and pay all unpaid interest and principal of all outstanding drainage district bonds in the county issued in anticipation of the collection of such special drain taxes. The statute provides also that the agreement constitutes a general obligation of the county and that the assumption of liability is not to exceed the constitutional limitations on the total indebtedness of the county. If the county advances money for the payment of the drainage bonds, the taxes when collected are to be credited to the general fund of the county.³⁸

The assessment, levy and collection of the drain taxes involved are governed by the procedure in the General Drain Act of 1923. The installments are to be levied and collected on the general tax rolls. The drain commissioner is to prepare a new special assessment roll for each drain to cover the extended assessments. The drain commissioner is also empowered to perform such other duties in connection with the assessment, levy and collection of the drain taxes as may be necessary. The new special assessment roll supersedes, for each drain, on and after the date of the first levy under the new roll, any installment levied against properties and political subdivisions on the special assessment roll prepared under the General Drain Law of 1923.³⁹ All drain taxes so extended remain a lien on the property assessed as if no extension had been made. The extension does not affect any lien under the General Drain Law.

The 1953 statute expressly excludes that portion of the drain taxes assessed at large against the county or against any state trunk line highway in the county, and is not intended to legalize or waive any defect in the proceedings establishing a drain project in the county. The statute applies only to property owned by persons who request an extension authorized by statute.⁴⁰

County Department and Board of Public Works

A 1957 statute⁴¹ authorizes counties containing more than 75,000 inhabitants (by the last decennial census) to establish a department and board of public works, and it empowers any county establishing such a department to acquire and operate a water supply system and a sewerage disposal system (or both) in any one or more areas of the county.⁴² There are 16 counties that have such a population.

The establishment of a department of public works requires a resolution of two-thirds of the members of the board of supervisors. The department is to be under the general control of the board of supervisors and under the immediate control of a board of public works.

The statute also provides that the board of supervisors has power to make such rules and regulations for the department of public works as the board considers advisable.

Board of Public Works, Membership and Organization

The board of public works is to consist of three, five or seven members, as determined by the board of supervisors, and the members are to be appointed by the board of supervisors. In the first instance, the terms are to be one, two and three years, according to a scheme set forth in the statute. Thereafter, the terms are for three years. Each term is to begin and end on January 1, but a member holds office until his successor is appointed and qualified. Any vacancy is filled by the board of supervisors for the unexpired term. If the county has a county drain commissioner, he is to be a member of the board of public works, during his term as drain commissioner. The members of the board of public works are not classified as full-time officers, and their compensation is to be fixed by the board of supervisors.

The board of public works is to elect each January a chairman, a vice-chairman, and a secretary, from its own membership, and a deputy secretary, who may or may not be a member of the board.⁴³ The board is to establish the time of its regular meetings, but a meeting must be held at least once each month. Special meetings may be called by the chairman or by any two members upon 24 hours written notice. Notice may be waived by any member either before or after the meeting. A majority of the full membership is necessary for a quorum but any action taken by the board must be adopted by a majority of the full membership. The board must keep a record of its proceedings; the record to be signed by the secretary (or deputy or acting secretary).

Board of Public Works, Powers and Limitations

The law grants the board of public works various powers and imposes certain limitations upon its activities.⁴⁴ The board may expend funds but it is expressly limited to the amount which the board of supervisors appropriates in the annual county budget for the expenses of the department of public works, unless a further appropriation is made by the board of supervisors.⁴⁵

The board of public works has authority to hire a director of public works, and to fix his salary within the budget appropriation. The board also has power to employ such professional and lay personnel as it thinks advisable, within the budget appropriation. But no budget appropriation is necessary if services in connection with a project are to be included in the project cost and paid from the proceeds of bonds or special assessments. The statute also provides that the cost of any project, and of operating and maintaining it, are to include amounts sufficient to cover the general administrative costs pertaining to the project. The provisions of the law relating to the employment of the director of public works and of professional and lay personnel are subject to the civil service law.⁴⁶

Establishment of Water Supply and Sewage Disposal Systems

The statute authorizing a department of public works provides that the establishment of any county system for water supply or sewage disposal must be approved by a majority of the board of supervisors. After such approval, the board of public works may acquire, improve, extend, operate and maintain the system, subject to any restrictions imposed by the board of supervisors in its resolution of establishment.⁴⁷

The law sets forth various conditions relating to the acquisition and operation of such a system. For example, a county may not furnish service to individual users within a municipality without its consent.⁴⁸ Various means of acquisition and operation are also prescribed.⁴⁹ In some matters the approval of the board of supervisors is required. Bonds issued for this purpose must be authorized by an ordinance or resolution approved by the board of public works and adopted by the board of supervisors. In addition, the board of supervisors is authorized, by a three-fifths vote of its members, to pledge the full faith and credit of the county for the prompt payment of the principal and interest on any bonds issued for this purpose. The bonds are to be issued in the name of the county and to be executed by the chairman of the board of supervisors and the county clerk.⁵⁰

The board of public works is authorized to acquire and deal with property in establishing a water or sewage system, but it may not dispose of real estate without the approval of the board of supervisors.⁵¹

The statute sets forth a special assessment procedure. The board of public works is expressly granted power to determine that all or a part of the cost of a project may be defrayed by special assessments against the properties benefited by the project.⁵² The procedure prescribed in this matter includes, among other things, the designation of the special assessment district, the preparation of a special assessment roll, the notice of a hearing, and the determination of annual installments.⁵³ Each year the director of public works is to certify to the county clerk, prior to the annual meeting of the board of supervisors, the installments due on each parcel of land in the district.⁵⁴ The county clerk is to certify to each assessing officer the several amounts to be spread as ordered by the board of supervisors.

The statute also sets forth a condemnation procedure, which may be commenced by the board of public works as an agency of the county.⁵⁵

Connecting Water Systems or Disposal Systems

In another statute, the legislature has empowered the board of supervisors of any county, by resolution of a majority of the members, to provide for connecting systems among local governmental units—that is, the board is empowered to authorize and direct the establishment of facilities and services for water, sewer, sewage disposal, or garbage and rubbish collection within or among cities, villages, townships, township improvement districts, or any combination of these, within or without the county.⁵⁶

The plans and estimates for such an improvement are to be prepared and filed with the board of supervisors by the board of county road commissioners, or the county drain commissioner, as determined by the board of supervisors. If the county is not operating under the county road system, the board of supervisors may appoint a three-member committee to prepare the information.⁵⁷ The board or committee so determined is called the “county agency” and it has supervision and control of the improvements, facilities and services. Likewise, it may establish rates or assessments to be charged for the services.⁵⁸ For this purpose the “agency” is authorized to make contracts with other local governmental units.⁵⁹ However, the board of supervisors may designate either a committee of its members, or the board of auditors, as a board of review with power to adjust rates and assessments.⁶⁰

The county, upon an ordinance or resolution by the board of supervisors, may obtain funds for constructing such improvements by issuing negotiable bonds secured by the full faith and credit pledges made by each contracting city, village or township. The board of supervisors, by the approval of a majority of its members, may pledge the full faith and credit of the county for the prompt payment of principal and interest.⁶¹ The county may also, upon an ordinance adopted by the board of supervisors, issue self-liquidating bonds under the Revenue Bond Act of 1933, (see Chapter 15). These bonds may not impose any liability upon the county, being secured only by the revenues from the improvements and facilities.⁶²

The statute relating to connecting systems also provides that the board of supervisors may, by a two-thirds vote of its members, appropriate from the general funds for administrative expenses, for a revolving fund to finance facilities, for the cost of extending, improving or repairing facilities, or for advances and loans to local governmental units for the improvement, extension or repair.⁶³ The law provides for the audit of advances or loans to local units by the board of county auditors, or, if there is no such board, by the board of supervisors.⁶⁴

Additional Methods of Establishment

A 1955 statute authorizes one or more municipalities (a county is a municipality for this purpose) to incorporate an authority for acquiring and operating a sewage disposal or water supply system. Various conditions are imposed by the statute.⁶⁵

Another statute permits a county, city or village, either individually or jointly, to acquire and operate specified facilities for the disposal of garbage, sewage and night soil. The powers granted in this matter include, among other things, the authority to condemn property, to issue bonds under certain conditions, and to create a separate board for control and supervision.⁶⁶

Abatement of Water Pollution

A county may contract with an industrial establishment for the operation by the county of facilities to abate or reduce the pollution of waters caused by the discharge of industrial wastes, if such a contract is determined by the board of supervisors to be necessary for the protection of the public health. In this connection, the county may accept aid in the form of grants from the United States Government or contributions from industries.⁶⁷

Other Powers to Finance Improvements

Other powers of the board of supervisors to borrow money for public improvements will be discussed in Chapter 15.

Notes to Chapter 10

1. MCL ss. 280.1-280.623, MSA ss. 11.1001-11.1623.
2. MCL ss. 280.21, 280.23, MSA ss. 11.1021, 11.1023.
3. MCL ss. 280.21-2, MSA s. 11.1021-2.
4. MCL ss. 280.28, MSA s. 11.1028.
5. Op. Atty. Gen. 1957, pp. 302-3. June 14, 1957, No. 2940.
6. MCL s. 280.26, MSA s. 11.1026.
7. MCL s. 280.29, MSA s. 11.1029.
8. MCL s. 280.30, MSA s. 11.1030.
9. MCL s. 280.31, MSA s. 11.1031.
10. Bloomfield Village Drain District v. Keefe 1941, 119F (2d) 157, Cert. den. 62 S. Ct. 95.
11. MCL s. 280.51, MSA s. 11.1051.
12. MCL s. 280.52, MSA s. 11.1071.
13. MCL s. 280.71, MSA s. 11.1071.
14. MCL ss. 280.73-84, MSA ss. 11.1073-84.
15. MCL s. 280.273, MSA s. 11.1273.
16. MCL s. 280.101, MSA s. 11.1101.
17. MCL s. 280.121, MSA s. 11.1121.
18. MCL s. 280.151, MSA s. 11.1151.
19. Op. Atty. Gen. 1953-54, pp. 35-36 Sept. 3, 1952, No. 1577.
20. MCL s. 280.221, MSA s. 11.1221.
21. Bloomfield Village Drain District v. Keefe, 1941 119 F (29) 157 Cert. den. 62 S. Ct. 95.
22. MCL s. 280.275, MSA s. 11.1275.
23. MCL s. 280.276, MSA s. 11.1276.
24. MCL s. 280.301, MSA s. 11.1301.
25. MCL s. 280.302, MSA s. 11.1302.
26. MCL s. 280.461, MSA s. 11.1461.
27. MCL s. 280.464, MSA s. 11.1464.
28. MCL ss. 280.465-489, MSA ss. 11.1464-89.
29. MCL ss. 280.551-2, MSA ss. 11.1551-2.
30. MCL s. 280.553, MSA s. 11.1553.
31. MCL s. 280.554-5, MSA ss. 11.1554-5.
32. MCL ss. 280.556-74, MSA ss. 11.1556-74.
33. MCL s. 280.575, MSA s. 11.1575.
34. MCL s. 280.576, MSA s. 11.1576.
35. MCL s. 211.391-5, MSA ss. 9.821-5.
36. MCL s. 279.31, MSA s. 11.170 (1).
37. MCL s. 279.32, MSA s. 11.170 (2).

38. MCL ss. 279.33-35, MSA ss. 11.170 (3) (5).
39. MCL s. 279.34, MSA s. 11.170 (4).
40. MCL ss. 279.36-38, MSA ss. 11.170 (6) (7) (8).
41. MCL ss. 123.731-786, MSA ss. 5.570 (1)-(56).
42. MCL ss. 123.732-737, MSA ss. 5.570 (2), (7).
43. MCL s. 123.733, MSA s. 5.570 (3).
44. MCL s. 123.732, MSA s. 5.570 (2).
45. MCL s. 123.735, MSA s. 5.570 (5).
46. MCL s. 123.736, MSA s. 5.570 (6).
47. MCL s. 123.740, MSA s. 5.570 (10).
48. MCL s. 123.739, MSA s. 5.570 (9).
49. MCL s. 123.741, MSA ss. 5.570 (11)-(17).
50. MCL s. 123.741, MSA s. 5.570 (11).
51. MCL s. 123.744, MSA s. 5.570 (14).
52. MCL s. 123.751, MSA s. 5.570 (21).
53. MCL ss. 123.752-5, MSA ss. 5.570 (22)-(25).
54. MCL s. 123.756, MSA s. 5.570 (26).
55. MCL ss. 123.771-86, MSA ss. 5.570 (41)-(56).
56. MCL s. 46.171, MSA s. 5.2767 (1).
57. MCL s. 46.173, MSA s. 5.2767 (3).
58. MCL s. 46.174, MSA s. 5.2767 (4).
59. MCL ss. 46.175, 175a-c, MSA ss. 5.2767 (5) (5.1) (5.3).
60. MCL s. 46.176, MSA s. 5.2767 (6).
61. MCL s. 46.175c, MSA s. 5.2767 (5.3).
62. MCL s. 46.177, MSA s. 5.2767 (7).
63. MCL ss. 46.178-9, MSA ss. 5.2767 (8) (9).
64. MCL s. 46.180, MSA s. 5.2767 (10).
65. MCL ss. 124.281-293, MSA ss. 5.2769 (51)-(63).
66. MCL ss. 123.241-8, MSA ss. 5.2661-8.
67. MCL ss. 323.101-2, MSA ss. 5.2770 (21) (22).

CHAPTER 11

Zoning

Zoning Authority

The board of supervisors of any county may, subject to certain conditions, provide by ordinance for zoning districts outside the limits of incorporated cities and villages. Within such districts the use of land for agriculture, forestry, recreation, residence, industry, trade, soil conservation, water supply conservation and other purposes may be encouraged, regulated or prohibited.¹ The districts may be of such number, shape and area as best suited for the purposes. The board may also establish districts for setback lines in areas subject to beach erosion. For this last, a surveyor or engineer must be consulted. The law specifies the particular matters to be dealt with in a zoning ordinance.

The legislative grant of zoning authority expressly excludes the regulation of oil and gas exploration.

The conditions imposed upon the exercise of zoning authority are both substantive and procedural. Zoning must be undertaken for certain objectives—that is, to limit the improper use of land, to avoid overcrowding, to reduce hazards, to facilitate the furnishing of services, to conserve property values and natural resources, and to promote the public health, safety, morals and general welfare. Procedurally, there must be (1) a resolution by the board of supervisors declaring its intent to proceed under the zoning law, followed by 10 days notice through publication in a newspaper, or (2) a petition asking the board to take such action followed by a resolution of intent by the board. The petition must be signed by qualified and registered voters, residing outside the limits of incorporated cities and villages and numbering not less than 8 per cent of the total vote cast in the area for governor at the last general election.²

The board of supervisors is authorized to levy a tax, in addition to taxes otherwise authorized, for the purpose of providing funds to carry out provisions of the zoning law. The taxes imposed, however, may not exceed the limit of the over-all taxes established by law.³

Zoning Commission

The exercise of authority under the zoning statute also involves the establishment of a permanent zoning commission of five mem-

bers. The board of supervisors is to appoint the commission within three months after the statute is made effective in the respective county. The members of the commission are to be selected for their qualifications and fitness and without regard to their political activities. Four members are to be chosen from the electors of the county, and one from the board of supervisors. The law sets forth several conditions relating to the four members chosen from the electors. At least three must reside outside the limits of incorporated villages or cities. No elected officer of the county and no employee of the board of supervisors may serve as one of these four members. Initially the four members have terms of one, two, three and four years, and thereafter, all have four-year terms. The board of supervisors may provide for filling vacancies and for the removal of a member for non-performance of duty or misconduct in office.⁴

Members of the zoning commission are to serve without compensation except for reasonable and official expenses actually incurred. The allowance for expenses and the compensation of employees is not to exceed a reasonable sum provided annually in advance by the board of supervisors.⁵

The zoning commission is required to hold a minimum of two regular meetings annually and to give published notice of such meetings. The commission is to elect from its membership a chairman, a secretary and other necessary officers, and it may engage employees (including technical assistants) for one year or less.⁶

Zoning Plan, Districts and Ordinance

The commission is required by law to adopt and file with the board of supervisors recommendations on (1) a zoning plan for unincorporated areas, (2) the establishment of zoning districts and their boundaries, (3) the text of a zoning ordinance, and (4) the manner of administering the ordinance. The commission is to make use of information obtainable from public officials and agencies, and is to be assisted by the department of economic development, which succeeded to the Michigan planning commission as the agency to act under the County Rural Zoning Enabling Act.⁷ Prior to submitting recommendations to the board of supervisors, the zoning commission is to hold at least one public hearing after published notice.⁸

When a zoning plan has been recommended by the commission, the board of supervisors is to consider the plan at its next regular meeting or at a special meeting called for the purpose. Proposed changes must first be submitted to the zoning commission for its advice or suggestions.⁹ The commission need not hold a public hear-

ing on such advice or suggestions,¹⁰ but it must report to the board within 30 days.

When a zoning ordinance has been adopted by the board of supervisors, it is to be submitted to the department of economic development for approval. The state commission has 60 days within which to act or the ordinance is presumed to have been approved. An ordinance becomes effective 60 days after state approval. The law also permits the electors to petition for a referendum. In such case, the ordinance does not take effect unless approved by a majority of the electors voting on the matter.¹¹

The law provides means of dealing with emergencies and for the manner in which nonconforming uses are to be handled.¹²

A board of supervisors, which exercises zoning authority, is required to appoint a county board of appeals consisting of three members. The terms of office are to be arranged in such a manner that the term of one member expires each year. Two members of the board are to be chosen from electors living in unincorporated areas of the county. The third member is to be a member of the county zoning commission. Compensation as per diem or as expenses may not exceed a reasonable sum provided in advance by the board of supervisors.¹³

The board of appeals is to act upon questions arising under the zoning ordinance and its administration and to hear and decide appeals of enforcement orders and decisions.¹⁴ The law sets forth the general manner in which the board is to proceed.¹⁵

The law declares that a building erected or used contrary to a zoning ordinance is to be treated as a nuisance per se for the purpose of enforcement. The board of supervisors is to designate in the ordinance the official responsible for enforcement and the penalties which may be imposed.¹⁶

Register of Deeds

The responsibilities of the county register of deeds are prescribed by various state laws which are outside the scope of this manual, but the board of supervisors has certain powers and duties, in relation to that office, and these will be considered.

Section 3 of Article VIII of the Constitution, which provides for the election of a register of deeds at the general biennial election, permits the board of supervisors to unite the offices of county clerk and register of deeds. The Attorney General has ruled that the two offices cannot be united in mid-term and that the power must be so

exercised as to permit the election of a single person to the combined offices.¹⁷ Moreover, the board of supervisors may not transfer powers and duties of the register of deeds to other officers.¹⁸

The law requires that the register of deeds keep his office at the seat of justice for the county, and that he give a bond to the people of the state in the sum of \$3,000, with two sureties approved by the county treasurer. The register of deeds is to appoint a deputy to hold office during the pleasure of the register. If there is no deputy, and in case of vacancy, absence or inability of the register, the probate judge may appoint a person to perform the duties.¹⁹

The board of supervisors is to provide the register of deeds with suitable books at the expense of the county.²⁰ The register is to acquire an official seal, at the expense of the county, for the certificates of record.²¹

The state law specifies that the register of deeds is to receive such fees and compensation for his services as are provided by law,²² and various statutes specify the fee which the register is to receive for particular services. For instance, the Plat Act provides that he is to receive \$5 for registering a plat (plot of ground) approved by the auditor general.²³

However, the board of supervisors may determine that the register of deeds is to receive a salary in lieu of fees. The salary is to be determined at the meeting in October prior to the commencement of the term of office.²⁴ If the salary is fixed by the board, the register is not entitled to fees.²⁵

The board of supervisors, by a vote of a majority of its members, may require the register of deeds to furnish a township supervisor a statement of any transfers of lands within his respective township.²⁶

System of Abstract of Title

The state law authorizes certain counties to establish systems for making and selling abstracts of title and otherwise furnishing information on land titles for a fee.²⁷ The counties granted this authority are (1) those having a population of 900,000 or more, (2) those having such a system when the act was passed in 1921, and (3) those in which the operation of an abstract system is approved by a majority of ballots cast on such a proposition, at an election requested by a petition of electors, equal to 8 per cent of vote at the last general election. However, the board of supervisors of a county under 900,000 population may establish a tract index without referendum.²⁸

When the board of supervisors in such a county desires to act under this authority, the board may, by ordinance or resolution, provide for purchasing, establishing and maintaining of such a system of records, indexes and the like. The board is also authorized to appropriate money, make contracts, employ or appoint agents and others for this purpose. The board may provide that the register of deeds may be the abstractor or the board may appoint a superintendent or abstractor to perform the duties. The compensation for performing such duties is to be fixed in advance of appointment.²⁹ The duties of such office are set forth in the statute.³⁰ The board of supervisors may provide that the faith and credit of the county may be pledged for the truth and accuracy of the abstracts. In this connection, the board may determine that a fund is to be accumulated by setting aside, in the county treasury, a percentage of the proceeds from each abstract sold.³¹

Surveyor

A county surveyor may be elected for a two-year term. A candidate for the office must be a graduate engineer and a registered surveyor and meet other prescribed requirements.³² However, in a county having a population of more than 500,000, according to the last federal census, the office may be abolished by a referendum at a general election.³³

A county surveyor may receive compensation not to exceed \$8.00 per day, or a salary fixed by the county board of supervisors. Compensation on a per diem basis is to be paid by the person for whom the services are performed.³⁴

The board of supervisors is authorized to employ a surveyor to identify government section corners or quarter posts if the board has good reason to believe that they are lost or are in danger of being lost. However, the work may be done only in such townships as vote to raise the required sum, not to exceed \$250 in any one township of 36 sections, or in that proportion for larger or smaller townships.³⁵

Plats of Subdivided Land; County Plat Board

Any proprietor subdividing land is required to make and record a plat in accordance with the provisions of the Plat Act of 1929, as amended.³⁶ This requires, among other things, that a plat of land in unincorporated areas be approved by a county plat board, as well as by the board of county road commissioners and the state auditor general.³⁷

The county plat board consists of the register of deeds, as chairman, and the board of county auditors. If there is no board of audi-

tors, then the plat board consists of the register of deeds, as chairman, the county clerk, the county treasurer and the county drain commissioner.³⁸

The county plat board is to determine whether lands are suitable for platting purposes. It may, among other things, require that streets conform to a general county plan, as well as to the streets in adjoining plats. The county plat board may also require the proprietor of the lands involved to furnish an abstract of title. If the majority of the board finds that the plat meets the various requirements established by law, they are to endorse approval; otherwise the plat is to be rejected.³⁹

Building Regulations; Houseboats

The board of supervisors in any county may, subject to certain conditions, provide by ordinance for minimum construction requirements in areas outside the limits of incorporated villages and cities. The board may also prescribe the type of materials and the manner of construction. For these purposes, districts may be established. The requirements for each class of dwelling, building or structure is to be uniform throughout each district.⁴⁰

The authority does not become operative without a declaration of intent by the board of supervisors or a petition by electors of the unincorporated areas. The petition must be signed by electors equal to at least 8 per cent of the vote cast at the last general election. If a petition is filed, the board of supervisors is at its next regular meeting to authorize the preparation of an ordinance, and not later than the second regular meeting, is to vote upon adoption of the ordinance.⁴¹ The ordinance is to be designed to promote the public health and the general welfare. The board of supervisors is to designate the official responsible for enforcement. Provision is also made for a referendum.⁴²

The board of supervisors may regulate by ordinance the location of houseboats on lakes, rivers, canals and waterways under the board's control and jurisdiction. This applies only to unincorporated areas. The board is to designate the official responsible for enforcement.⁴³

Notes to Chapter 11

1. MCL s. 125.201, MSA s. 5.2961 (1).
2. MCL ss. 125.202-3, MSA ss. 5.2961 (2) (3).
3. MCL s. 125.225, MSA s. 5.2961 (25).
4. MCL s. 125.204, MSA s. 5.2961 (4).
5. MCL s. 125.206, MSA s. 5.2961 (6).
6. MCL s. 125.205, MSA s. 5.2961 (5).

7. MCL ss. 125.207-8, MSA ss. 5.2961 (7) (8), MCL s. 125.7, MSA s. 3.540 (7).
8. MCL s. 125.209, MSA s. 5.2961 (9).
9. MCL s. 125.210, MSA s. 5.2961 (10).
10. Op. Atty. Gen. 1947-48, pp. 694-5. June 1, 1948, No. 775.
11. MCL ss. 125.211-2, MSA ss. 5.2961 (11) (12).
12. MCL ss. 125.215-7, MSA ss. 5.2961 (15) (17).
13. MCL ss. 125.218, MSA s. 5.2961 (18).
14. MCL s. 125.220, MSA s. 5.2961 (20).
15. MCL ss. 125.219-23, MSA ss. 5.2961 (19) (23).
16. MCL s. 125.224, MSA s. 5.2961 (24).
17. Ops. Atty. Gen. 1939-40, pp. 286-7. October 25, 1939; 1945-46, pp. 94-5; October 13, 1944, No. 0-2787; 1947-48, pp. 30-40; August 19, 1946, No. 0-4968.
18. Thomas v. Board of Supervisors, Wayne Co., 1921, 214 M 72, 87-89, 182 NW 417.
19. MCL ss. 53.89-93, MSA ss. 5.981-5.
20. MCL s. 53.94, MSA s. 5.986.
21. MCL s. 53.111, MSA s. 5.991.
22. MCL s. 53.90, MSA s. 5.982.
23. MCL s. 560.38, MSA s. 26.468.
24. MCL s. 45.401, MSA s. 5.911.
25. Op. Atty. Gen. 1945-46, pp. 387-8. June 21, 1945, No. 0-3647.
26. MCL s. 211.41a, MSA s. 7.82 (1).
27. MCL s. 53.111, MSA s. 5.1001.
28. MCL s. 53.151, MSA s. 5.1011.
29. MCL ss. 53.142-4, MSA ss. 5.1002-4.
30. MCL s. 53.145, MSA s. 5.1005.
31. MCL s. 53.146, MSA s. 5.1006.
32. MCL s. 54.95, MSA s. 5.1021.
33. MCL s. 54.252, MSA s. 5.1034.
34. MCL s. 54.106, MSA s. 5.1032.
35. MCL s. 54.221, MSA s. 5.511.
36. MCL s. 560.3, MSA s. 26.433.
37. MCL ss. 560.15a, 560.29, 560.38, MSA ss. 26.445 (1), 26.459, 26.468.
38. MCL s. 560.2, MSA s. 26.432.
39. MCL s. 560.26-9, MSA ss. 26.456-9.
40. MCL s. 125.251, MSA s. 5.2964 (1).
41. MCL s. 125.252, MSA s. 5.2964 (2).
42. MCL ss. 125.253-5, MSA ss. 5.2964 (3) (5).
43. MCL ss. 123.591-2, MSA ss. 5.2965 (1) (2).

CHAPTER 12

Officers and Employees

Scope of Chapter

In setting forth the powers and duties of the board of supervisors relating to officers and employees of the county, this chapter will discuss briefly: (1) boards, commissions and committees, (2) judges, (3) officers required by the Constitution, (4) other officers, and (5) employees. While this classification is not official it is helpful for most purposes.

Boards, Commissions and Committees

The law provides for the establishment of various boards, commissions and committees, many of which are discussed in other chapters of this manual in connection with particular fields of activity, such as education, social welfare and public works.

The boards, or committees, which probably bear most upon the activities of the board of supervisors are those dealing with finance, that is, the board of county auditors and the finance committee of the board of supervisors. These groups do not exist in every county, but where either does exist it undertakes several functions which otherwise would fall upon the board of supervisors. The powers and duties of the two groups are discussed in Chapter 3 and 16.

Other boards or commissions which are discussed elsewhere in this manual include the county board of education and the county library board, discussed in Chapter 5, the board of health, the county public nurse committee and the board of hospital trustees mentioned in Chapter 6, the county social welfare board which was dealt with in Chapter 7, the county fair board, forestry commission, and board of park trustees described in Chapter 8, the board of county road commissioners discussed in Chapter 9, the board of public works described in Chapter 10, the zoning commission, and the county plat board as noted in Chapter 11, the tax allocation board to be discussed in Chapter 14, and the board of sinking fund commissioners to be noted in Chapter 15.

Relationship of Board of Supervisors and Other Boards

The relations between the board of supervisors and the other boards or commissions of the county are dealt with specifically in various statutes described in other chapters of this manual.

The general position of the board of supervisors in this respect is indicated in an opinion of the Michigan Supreme Court in a case involving the right of a county superintendent of schools to collect the salary voted for him by the county board of education but not appropriated by the county board of supervisors.¹ The Court held that the superintendent was entitled to the salary. However, as a precedent the case may be somewhat limited because: (1) there was no claim that the salary was unreasonable (2) the board of supervisors did not contend that an appropriation would have been beyond the legal financial resources of the county, and (3) the board of supervisors did not object to the salary when the budget of the board of education was presented to it for review.

The effect of the opinion is that the board of supervisors may not act as a super board of education, substituting its judgment for that of the board of education on matters entrusted to the latter, but that the board of supervisors may object to items in a budget, if the objection is timely and the amount is unreasonable or beyond the financial resources of the county.

Circuit Court Judges and Commissioners

Section 8 of Article VII of the Constitution provides that the state is to be divided into judicial circuits, in each of which at least one circuit court judge is to be elected. The legislature, in the Judicature Act, has divided the state into judicial circuits composed of one or more counties and provided for the election of one or more judges in each circuit.²

Circuit court judges are elected for six-year terms at the biennial spring election, that is, on the first Monday in April of the odd-numbered years. The circuit courts have jurisdiction in all civil and criminal matters, not excepted in the Constitution or prohibited by law. The county clerk acts as clerk of the court. The judges of the circuit courts may fill any vacancy in the offices of county clerk or prosecuting attorney within their jurisdiction, but otherwise they may have no power of appointment.³

A circuit judge is paid a salary by the state but may receive from any county in which he regularly holds court such additional salary as may be determined by the board of supervisors.⁴

The Constitution authorizes the legislature to provide for the election of circuit court commissioners. A county may have one to four commissioners depending upon its population. Counties of 20,000 to 500,000 population have two circuit court commissioners.⁵

The fees to which a circuit court commissioner is entitled are prescribed by law.⁶ However, in certain counties the commissioner

is paid a salary by virtue of local acts for such counties. A statute enacted in 1921 allows the board of supervisors in such counties to provide an additional amount of the salary.⁷ The Attorney General has said that in absence of a local act, the board of supervisors may not fix the commissioner's salary.⁸

Probate Judges

The Constitution also provides for a probate court in each organized county.⁹ The powers of the probate court include, among other things, original jurisdiction in all cases of juvenile delinquents and dependents, as noted in Chapter 7. The judges of probate are elected in the counties in which they reside and hold office for four years.¹⁰ The judge is to maintain an office at the county seat and in each city in which circuit court sessions are held. Counties having a population of from 100,000 to 1,000,000 inhabitants may have two probate judges if they had two such judges when the Probate Code of 1939 became effective, or if approved at a referendum initiated by the board of supervisors or by a petition of electors.¹¹

The Probate Code sets forth a salary schedule based on the population of the county, but the board of supervisors, by a majority vote of its members, may give such additional salary as it chooses.¹²

All fees received by the probate court are to be paid to the county treasurer each month and credited to the general fund of the county.¹³

The probate judge may appoint a probate register. If the county population is less than 15,000, the authority to appoint requires majority approval by the board of supervisors. A salary schedule is outlined in the statute, but a majority of the board of supervisors may provide additional compensation. In a county having a probate register, the probate judge may appoint such clerks as may be necessary. Their salaries are to be determined by the board of supervisors.¹⁴

Constitutional Officers

Section 3 of Article VIII of the Constitution provides that a sheriff, county clerk, county treasurer, register of deeds, and a prosecuting attorney are to be elected biennially. The sheriff, county clerk, county treasurer and register of deeds are required by the Constitution to hold their offices at the county seat.

The Constitution permits the board of supervisors to combine the latter office with that of county clerk. The powers and duties of the register of deeds were discussed in Chapter 11. The powers and duties of the board of supervisors with respect to other officers will be discussed briefly.

Sheriff

Section 5 of Article VIII of the Constitution provides that a sheriff is to be elected in each organized county, that he may not hold any other office, and that the county is not responsible for his acts.

The sheriff is elected at the biennial November election for a two-year term.¹⁵ If a vacancy occurs, a qualified person is to be appointed by the probate judge, the county clerk and the prosecuting attorney. If, in the interim, there is no undersheriff, the circuit judge must designate one of the county coroners to serve until an appointment has been made.¹⁶

The sheriff may appoint deputies and revoke such appointments at his pleasure. He is required to appoint an undersheriff, who is to act in case of a vacancy until a new sheriff is elected.¹⁷ There are also statutes dealing with the appointment of deputies in counties of more than 150,000. Among other things, these permit the board of supervisors to determine the number of deputy sheriffs and to determine salaries, with a minimum amount specified in certain cases.¹⁸

The power of the board of supervisors over the compensation of the sheriff, undersheriff and deputies will be discussed later.

County Clerk

Various functions of the county clerk in relation to the board of supervisors have been discussed in Chapter 3 and in other places. In addition, the clerk, who is also elected at the biennial November election, has certain duties in relation to the Secretary of State and he must file an annual report with the Secretary of State. Moreover, he is required to give a bond to the people of the state.¹⁹

The clerk is to appoint one or more deputies, approved by the circuit court judge. One deputy is to be designated as successor in event of vacancy from any cause. The clerk is responsible for the acts of his deputies.²⁰ The clerk may procure, at the expense of the county, necessary books and calendars under the direction of the circuit court judge. The board of supervisors is to audit and allow the account for such books and calendars.²¹

The board of supervisors may fix the salary of the clerk for all services rendered in criminal cases, as clerk of the board of supervisors, and as clerk of the board of canvassers. For his services in civil cases and certain other matters, the clerk is to receive fees and compensation as provided by law.²²

County Treasurer

Many of the powers and duties of the county treasurer are dealt with in other chapters of this manual. The treasurer is elected at the November election for a two-year term. He is required to give a bond of faithful performance to the board of supervisors, with at least three sureties. The bond is to be in such sum as the board may direct. The sureties are subject to the approval of the board, provided it acts within 20 days after the commencement of the term of office.²³

The treasurer is to receive all money belonging to the county, and he is to exhibit his books and accounts to the board of supervisors at its annual meeting or such other time as it may determine.²⁴ The board may direct the county board of auditors to insure county buildings, and the insurance is to be taken in the name of the treasurer.²⁵

The board of supervisors is to determine the compensation of the treasurer.²⁶ The board is to provide him a separate and distinct office, and no other office may be maintained in connection with his office.²⁷ The treasurer may appoint a deputy to act in case of vacancy or disability.²⁸

Prosecuting Attorney

The prosecuting attorney is required to prosecute or defend in all courts of the county all cases in which the county or state may be interested. He is also to give opinions when required by civil officers in discharge of duties relating to the interests of the county or state.²⁹ For instance, the attorney general has ruled that the prosecutor must advise the county road commissioners on questions involving highway matters.³⁰

The prosecuting attorney is elected at the general biennial election in November. In case of vacancy or absence, the supreme court or the circuit court may appoint an attorney to perform his duties.³¹

The board of supervisors determines the compensation which the prosecutor is to receive.³² The board of supervisors, by resolution at the regular annual meeting, may authorize the appointment of assistant prosecuting attorneys, investigating officers, clerks, stenographers and other clerical employees, as the board thinks necessary.³³ The appointments are to be made by the prosecutor.³⁴ Within 10 days after he enters office, he is to designate a chief assistant prosecuting attorney.³⁵ The salaries of the assistants and the various employees are to be determined by the board of supervisors at its regular annual meeting, and the salaries are not to be diminished during the term of appointment.³⁶

Another statute permits the prosecutor to appoint an assistant with the consent of the circuit judge, but it provides that compensation is to be paid by the prosecutor.³⁷

Other Officers

The legislature has, by statute, established or authorized the election or appointment of various other officers, including the county superintendent of schools, (Chapter 5), the county health officer, and coroner or medical examiner, (Chapter 6), the social welfare director, the supervisor of social aid and the county agent of the probate court (Chapter 7), the county agricultural agent (Chapter 8), the county road superintendent, the commissioner of noxious weeds (Chapter 9), the county drain commissioner, the director of public works (Chapter 10), the county surveyor (Chapter 11), a purchasing agent (Chapter 13) and a controller (Chapter 16).

Vacancies in County Offices

There are several statutory provisions relating to the filling of vacancies in various county offices.³⁸ To some extent, these provisions seem to conflict or overlap. However, it appears that with the exception of vacancies in the office of county clerk and the prosecuting attorney, which must be filled through appointments made by the circuit judges,³⁹ vacancies are to be filled by majority vote of a committee consisting of the probate judge, the county clerk and the prosecuting attorney.⁴⁰ The attorney general has ruled to this effect in relation to the sheriff,⁴¹ the county treasurer,⁴² and the coroner.⁴³ However, the board of supervisors is to fill vacancies in the board of road commissioners.⁴⁴

Officers Compensation

Section 9 of Article VIII of the Constitution provides that the board of supervisors has exclusive power to fix the salaries and compensation of all county officials not otherwise provided for by law. This authority of the board is also set forth in a statutory enactment.⁴⁵

There are several statutory provisions dealing with the compensation of officers and many of these expressly authorize action by the board of supervisors. Some of these provisions relate only to particular offices, and they have been mentioned in the discussions of the respective offices. Other statutory provisions are broader in their scope.

One statute authorizes the board of supervisors to fix salaries for the sheriff, undersheriff, and deputy sheriffs, and the county clerk, county treasurer and register of deeds and their deputies.⁴⁶ Such salaries may be paid out of the general fund of the county. The

amounts are to be determined at the meeting in October prior to the commencement of the terms of office and are to be compensation in full for all services performed by such officers.

There is also a statute dealing specifically with officers' salaries in counties having a population of 1,000,000 or more (that is, Wayne County).⁴⁷

The Michigan Supreme Court has held that compensation to a public officer is a matter of statute and not of contract. The court has stated that compensation is incidental to office and that a waiver of the compensation by the officer is contractual, and accordingly, not binding.⁴⁸ Moreover, an official salary is not dependent upon the amount of work done.⁴⁹ The court has also said that the salary of a public officer, once duly fixed, can be changed only by a like compliance of the statutory method.⁵⁰

When the board of supervisors has power to fix the annual salary of a county officer, the action is to be taken on or before October 31 prior to the commencement of the term of office. Moreover, the salary may not be increased or diminished during the term for which the officer has been elected or appointed.⁵¹ Likewise, a board of supervisors cannot limit in any way the power of subsequent boards of supervisors to exercise their constitutional or legislative power to fix salaries.⁵²

Officers Oaths and Bonds

Most of the important officers of the county are required to take the constitutional oath. This applies to all constitutional officers, except the prosecuting attorney.⁵³

Likewise, most of the important officials must give a bond. The requirements may vary, and they have been mentioned elsewhere in discussing particular offices. However, the board of supervisors has a general power to require bonds of officials paid by the county. This will be discussed in the next section of this chapter.

Generally, the bond of an officer is subject to approval by the board of supervisors. If approval has not been given when an officer assumes his duties, the circuit judge, or the probate judge, may approve, subject to approval by the board at its next meeting.⁵⁴ The board may require bonds to be obtained from surety companies authorized by the state. The cost, not to exceed 1 per cent per annum of the amount of the bond, may be paid from the general fund of the county.⁵⁵ The constitutional oath required of county officials is generally to be deposited with the county clerk, and the required bond is to be deposited with the county treasurer. However, the treasurer's bond is to be filed with the clerk.⁵⁶

Officers Duty to Submit Reports

Various statutes require particular officers to submit reports to the board of supervisors. These requirements are mentioned throughout this manual in the discussions of particular functions and officers. In addition, the legislature has imposed a general duty on county officers in the matter of submitting reports.

The statute setting forth the general powers and duties of the board of supervisors authorizes the board to require any county officer whose salary or compensation is paid by the county to make a report under oath to the board on any subject connected with the duties of his office. Moreover, the board of supervisors may require such officers to give bonds as are reasonable or necessary for the faithful performance of their respective duties. An officer who neglects or refuses to make any such report, or to give such bond within a reasonable time, may be removed from office by a two-thirds vote of the elected members of the board. In such case the office may be declared vacant, and the board may fill the vacancy for the unexpired portion of the term. However, if the office is an elective one and a spring or fall election occurs before the expiration of the term, the vacancy is to be filled at the election. The board is to give reasonable notice of such election.⁵⁷

Officers, Removal, Recall

Section 8 of Article IX of the Constitution provides that any officer elected by a county may be removed in the manner and for such cause as prescribed by law. There are a number of statutory provisions on this matter. One deals with certain elected officers, another deals with officers appointed by the board of supervisors, and others deal with particular officers.

The legislature has provided that the regular elected officials of the county—that is, the clerk, treasurer, register of deeds, prosecuting attorney, sheriff, drain commissioner, surveyor and coroner—may be removed by the governor for cause. The reasons for removal include official misconduct, wilful neglect of duty, extortion, habitual drunkenness, and conviction of drunkenness or of a felony. The official must be given prior notice of the charges against him.⁵⁸

The county clerk may be removed under certain conditions by the circuit judge or the circuit court commissioner.⁵⁹

The general powers of the board of supervisors include the authority to remove any officer or agent appointed by the board when, in its opinion, he is not competent to execute properly the duties of his office, or when it is satisfied that he has been guilty of

official misconduct, or habitual or wilful neglect of duty sufficient to justify his removal. However, no officer or agent may be removed for misconduct or neglect unless charges thereof have been preferred to the board of supervisors or its chairman, and notice of the hearing, with a copy of the charges, delivered to the officer or agent, and a full opportunity given him to be heard, with or without counsel.⁶⁰

The Attorney General has ruled that the board of supervisors has power to remove a county road commissioner provided the statutory procedure is followed,⁶¹ but it cannot remove a school examiner.⁶²

An elected official of the county is subject to recall by the electors of the county, but no petition for recall may be circulated until he has performed his duties for three months.⁶³ A petition must be signed by registered and qualified electors of the county equal to 25 per cent of the county vote for governor at the last election.⁶⁴ The petition is to be filed with the county clerk. The time for the recall election is fixed by statute. If the recall is successful, another election is to be had to fill the vacancy.⁶⁵

Employees, Authority to Engage

One section of the statute setting forth the general powers and duties of the board of supervisors provides that that board "may appoint a county purchasing agent and such other representatives, agents and employees for its county as may be deemed necessary by it, to carry out any of the powers granted by this act or by any other law of the state."⁶⁶ However, to a considerable degree, county employees are engaged by particular officers or agencies, and the board of supervisors exercises control through its review of proposed budgets. The Attorney General has ruled that "an elective officer cannot bind the county by a contract of hire without the express or implied authority of the board of supervisors." Supplementing this rule, the Attorney General remarked that ordinarily, "budgetary provision is made for necessary clerk hire in making the annual appropriation for the operation of a particular office" and that this "would imply in the officer power to contract for assistance within but not beyond the amount so appropriated."⁶⁷

Civil Service System; Veteran's Preferences

A state law enacted in 1941 permits civil service systems in counties having a population of more than 300,000. At that time, only Wayne county met this requirement. Now, Oakland, Genesee and Kent counties are also in this category.

In these counties the adoption of a civil service system involves a resolution by a majority vote of the board of supervisors, a referendum at a general or special election and approval by a majority of the electors voting thereon.⁶⁸ When adopted, the statute applies to all boards, commissions and departments of the county.⁶⁹

The operation of the system involves the appointment by the board of supervisors of a three-member civil service commission. Not more than two commissioners may be of the same political party.⁷⁰ Each commissioner is to receive per diem compensation for a period not exceeding 200 days in any one year. He is also to receive necessary traveling expenses and mileage. The number of days of service and the compensation and expenses are to be fixed by the board of supervisors. The civil service commission is to engage a personnel director, who is also the chief examiner, the necessary assistants and employees. The compensation of the director and the others is to be determined by the board of supervisors.⁷¹ The commission is required to make a report to the board of supervisors at the October session or at any other time specified by the board.⁷²

The civil service system is designed to guarantee all citizens a fair and equal opportunity for public service.⁷³ Its operation involves the establishment of employee classification, open competitive examinations, appointments in accordance with a prescribed procedure, and the regulation of promotions and removals or suspensions.⁷⁴

Whether or not there is a civil service system, members of the armed forces of the United States, who have been honorably discharged, are to be preferred for employment in the public departments and the public works of a county, municipal corporation, and the state.⁷⁵

Employees Compensation, Group Insurance and Retirement Plan

The provision of the constitution which, as previously mentioned, gives the board of supervisors "exclusive power to fix the salaries and compensation of county officials not otherwise provided by law" does not apply to county employees. However, the legislature has granted the board of supervisors a general power to prescribe and fix the salaries and compensation of all employees of the county not fixed by law.⁷⁶ In several instances, noted throughout this manual, the legislature has given the power to fix salaries either to the board or to a particular office or agency subject to approval by the board of supervisors.

When a county is under the civil service act, the compensation of county employees is to be fixed by the civil service commission,

subject to approval of the board of supervisors, and cannot be changed without action of both agencies.⁷⁷

Employees Group Insurance and Retirement Plan

The legislature has authorized the board of supervisors to provide group life, health and accident or hospitalization insurance for county employees and also to adopt a plan whereby the county purchases or participates in the cost of endowment policies or retirement annuities for the county employees.⁷⁸

This authority relates to employees of the several offices, board and departments of the county, including the board of county road commissioners as well as employees of the county itself. However, "employee" is defined to include persons who receive more than 50 per cent of all compensation from county funds, or county road funds, for personal services rendered to governmental units, except temporary employees and persons engaged for special services on a contract or fee basis.

Any county employee who is included in any other pension or retirement system by reason of compensation received from the county, in the discretion of the board of supervisors, may be excluded from the plan under this authorization. The statute authorizes two types of pension or retirement plans. Both take into account length of service and average earnings during a five-year period but differ in other aspects. For instance, one permits benefits after the employee has reached 60 years of age, while in the other plan, an employee would be eligible either at that age or after 25 years of employment.

In a county pension or retirement plan the board of supervisors may require county employees, except elected or appointed officials, to retire upon attaining an age of not less than 65 years, or as an alternative, the board of supervisors may exclude service after such age from the benefits of the pension or retirement plan.

An employee group insurance or retirement plan is a complicated and technical matter and a board considering a proposed plan may well obtain the advice of specialists or other persons experienced in the matter.

Notes to Chapter 12

1. *Sturgis v. County of Allegan*, 1935, 343, M 209 at 216, 220 NW 301.
2. MCL s. 602.1, MSA s. 27.131.
3. Constitution, Art. VII, Sections 9-11.
4. Constitution, Art. VII, Section 12.
5. MCL s. 602.96, MSA s. 27.219.
6. MCL s. 649.1, MSA s. 27.2559.

7. MCL s. 691.281, MSA s. 27.321.
8. Op. Atty. Gen. 1943-44, p. 709. April 14, 1944, No. 0-2119.
9. Constitution, Article VII, Sections 13, 14.
10. MCL s. 701.1, MSA s. 27.3178 (1).
11. MCL s. 701.2, MSA s. 27.3178 (2).
12. MCL s. 701.4, MSA s. 27.3178 (4).
13. MCL s. 701.17, MSA s. 27.3178 (17).
14. MCL ss. 701.12-13, MSA ss. 27.3178 (12) (13).
15. MCL s. 51.68, MSA s. 5.861.
16. MCL s. 201.35, 52.87, MSA ss. 6.715, 5.952.
17. MCL ss. 51.70-2, MSA ss. 5.863-5.
18. MCL ss. 51.241-2, 51.261, MSA ss. 5.891-2, 5.901.
19. MCL s. 50.61, MSA s. 5.831.
20. MCL ss. 50.63-4, MSA ss. 5.833-4.
21. MCL s. 50.66, MSA s. 5.836.
22. MCL s. 50.67, MSA s. 5.837.
23. MCL ss. 48.35-6, MSA ss. 5.681-2.
24. MCL ss. 48.40-1, MSA ss. 5.686-7.
25. MCL s. 48.44, MSA s. 5.690.
26. MCL s. 48.43, MSA s. 5.689.
27. MCL ss. 48.121-2, MSA ss. 5.721-2.
28. MCL s. 48.37, MSA s. 5.683.
29. MCL ss. 49.153-5, MSA ss. 5.751-3.
30. Op. Atty. Gen. 1956, pp. 80-1. February 15, 1956, No. 2462.
31. MCL s. 49.160, MSA s. 5.758.
32. MCL s. 49.159, MSA s. 5.757.
33. MCL s. 49.31, MSA s. 5.791; *L. Scudder & Co. v. Emmet County* 1939, 288 M 181, 284 NW 691.
34. Op. Atty. Gen. 1949-50, pp. 99-100. January 18, 1949, No. 877.
35. MCL s. 49.32, MSA s. 5.792.
36. MCL s. 49.34, MSA s. 5.794.
37. MCL ss. 49.41-2, MSA ss. 5.801-2.
38. MCL ss. 51.72, 53.93, 201.15, 201.35, 168.209, MSA ss. 5.865, 5.985, 6.705, 6.715, 6.1209.
39. MCL s. 201.15, MSA s. 6.705. Op. Atty. Gen. 1935-36, pp. 130-2. April 10, 1935.
40. MCL ss. 201.15, 168.20, MSA ss. 6.705, 6.1209.
41. Op. Atty. Gen. 1930-32, pp. 610-3. June 22, 1932.
42. Op. Atty. Gen. 1926-28, pp. 37-8. January 3, 1927.
43. Op. Atty. Gen. 1928-30, pp. 447-9. June 21, 1929.
44. *Attorney General v. Joyce*, 1926, 233 M 619, at 622-4, 207 NW 2.
45. MCL s. 46.11, par. 9, MSA s. 5.331, par. 9.
46. MCL s. 45.401, MSA s. 5.911.
47. MCL s. 45.451, MSA s. 5.360(1).
48. *McQuaid v. Oakland County Board of County Auditors*, 1946, 315 M 234, 23 NW (2d) 644.

49. *Hawkins v. Voisine*, 1940 292 M 357 at 359, 290 NW 827.
50. *Lee v. Macomb County*, 1937, 288 M 233, at 237, 284 NW 707.
51. MCL s. 45.421, MSA s. 5.1101, *Vigelius v. Houghton County Clerk*, 1947, 317 M 138.26 NW (2) 737.
52. *Atlas v. Wayne County Board of Auditors*, 1937, 281 M 596 at 599, 275 NW 507.
53. MCL ss. 45.318, MSA ss. 5.1081.
54. MCL s. 45.351, MSA s. 5.1091.
55. MCL s. 45.371, MSA s. 5.1095.
56. MCL ss. 45.318-9, MSA ss. 5.1081-2.
57. MCL s. 46.11, par. 14, MSA s. 5.331, par. 14.
58. MCL s. 168.207, MSA s. 6.1207.
59. MCL s. 168.208, MSA s. 6.1208.
60. MCL s. 46.11 par. 17, MSA s. 5.331, par. 14.
61. *Op. Atty. Gen.* 1928-30, pp. 666-8. November 8, 1929.
62. *Op. Atty. Gen.* 1914, pp. 498-9. February 4, 1914.
63. MCL s. 168.951, MSA s. 6.1951.
64. MCL s. 168.955, MSA s. 6.1955.
65. MCL ss. 168.963, 168.971, MSA ss. 6.1963, 6.1971.
66. MCL s. 46, MSA s. 5.335.
67. *Op. Atty. Gen.* 1943-44, pp. 435-6. June 3, 1943, No. 0-795.
68. MCL ss. 38.402-5, MSA ss. 5.1191 (2) (5).
69. MCL s. 38.427, MSA s. 5.1191 (27).
70. MCL ss. 38.408-9, MSA ss. 5.1191 (6) (7).
71. MCL ss. 38.408-9, MSA ss. 5.1191 (8) (9).
72. MCL s. 38.417, MSA s. 5.1191 (17).
73. MCL s. 38.401, MSA s. 5.1191 (1).
74. MCL s. 38.410-16, MSA ss. 5.1191 (10) (16).
75. MCL s. 35.401, MSA s. 4.1221.
76. MCL s. 46.11, par. 9, MSA s. 5.331, par. 9.
77. *Op. Atty. Gen.* 1945-46, pp. 695-8. May 13, 1946, No. 0-4641.
78. MCL s. 46.12a, MSA s. 5.333 (1).

CHAPTER 13

County Property and Buildings

Nature of Statutory Provisions

The statutory provisions relating to county property and buildings tend to be somewhat disjointed and overlapping. For instance, there is one set of provisions which deals generally with the construction and repair of buildings and bridges and another set of provisions which relates to the location and erection of new buildings. Moreover, these last provisions include authorizations of the purchase and sale of real estate, and elsewhere there are other provisions relating to the acquisition and disposition of real estate generally. The discussion in this manual will deal with particular statutes rather than attempt to combine those which appear to involve similar matters.

County Seat

Section 13 of Article VIII of the Michigan Constitution provides that a county seat once established cannot be removed until the new site has been designated by two-thirds of the board of supervisors, and a majority of the electors voting on the matter shall have voted in favor of the proposed location. The legislature has authorized the board of supervisors to remove the county seat under the conditions set forth in the Constitution.¹ The legislature has also prescribed a procedure for submitting the matter to election. Among other things, this requires 30 days public notice and publication in a newspaper for three consecutive weeks.²

Real Estate, Purchase, Tax Exemption, Exchange, Sale, Lease

The Michigan statutes authorize the county board of supervisors to purchase any real estate necessary for the site of a courthouse, jail, clerk's office, or any other county building in the county.³ They also authorize the county board to purchase, for the use of the county, any real estate necessary for the erection of buildings for the support of the poor and for a farm to be used in connection therewith.⁴

Lands owned by a county, township, city, village or school district and used for public purposes are exempt from taxation. This includes parks open to the public generally.⁵

The legislature has authorized the county board of supervisors to acquire by exchange lands needed for county purposes. This in-

cludes the authority to purchase other lands of approximately equal value to be used in exchange for lands owned by the federal government and needed for county purposes.⁶

The county board of supervisors is also authorized to sell or lease any real estate belonging to the county and the board may prescribe the mode in which a conveyance of property is to be executed.⁷

The Attorney General has ruled that the board of supervisors may lease the fair grounds property of the county, if not needed for fair purposes, and there are no restrictions against the proposed use.⁸

Real Estate, Use as Parking Lot

The board of supervisors of any county is empowered to establish, maintain and regulate parking lots on land owned by the county. The board may enact rules and regulations for the safe and proper use of the lots. It may establish penalties for violations, subject to the limits of a \$10 fine or 10 days in the county jail.⁹

Real and Personal Property, Procedure for Holding and Selling

The state law provides that real and personal property previously conveyed to any committee trustee or other person for the use and benefit of the county is property of the county.¹⁰

The law also provides that the board of supervisors, or other public officers having the charge and management of county lands, by their order of record, may appoint one or more agents to sell any real estate of the county not donated for any special purpose and that deeds made by them are sufficient to convey all the rights, title and interest of the county.¹¹

Buildings and Bridges, Construction and Repair

Section 10 of Article VIII of the Michigan Constitution provides that a county may, in any one year, levy a tax of one-tenth of one mill on the assessed valuation of the county for the construction or repair of public buildings or bridges, or it may borrow an equal sum for such purposes. However, in a county where the assessed valuation is less than ten million dollars, the board may levy a tax or borrow for such purposes to the amount of \$1,000. This section of the Constitution also provides that no greater sum may be raised for such purposes in a county in any one year unless submitted to the electors and approved by a majority of those voting on the matter.

The legislature has also authorized the county board of supervisors to act in this matter. The language of the relevant statutory provision is similar to that of the Constitution.¹² The legislature, in addition, has prescribed the procedure for holding the referendum.¹³

The legislature has also expressly imposed a duty upon the county board of supervisors to cause the courthouse, jail, and all other public buildings and public offices to be repaired, as often as it is necessary, at the expense of the county.¹⁴ This statute also sets forth the tax limitation described above. However, the Attorney General has ruled that funds which were not raised by taxation may be used for alterations in addition to the one-tenth of one mill authorized.¹⁵ Likewise penal fines may be used for construction or repair of a county library building without a referendum.¹⁶

The state law requires that each organized county, at its own cost and expense, provide at its county seat a suitable courthouse, sufficient jail, fireproof offices, and all other necessary buildings.¹⁷

The plan of any jail proposed for a county must be approved by the state corrections commission, and until the opinion of such board has been filed with the county clerk, no contract for the erection of a county jail is valid or binding and no money may be paid out of the county treasury for the construction of the jail. Furthermore, the law provides that in case of the escape of a prisoner by reason of the insufficiency of the jail the county is to reimburse the sheriff (or other officer performing his duties) any sums recovered from the sheriff (or other person) by the party at whose suit the prisoner was committed.¹⁸

A county jail may not be constructed outside the city or village at which the county seat is located.¹⁹ Also, the state department of corrections may require that, in constructing a county jail, space be included for the living quarters of the sheriff.²⁰

New Buildings, Determination of Site

The statutes relating to the purchase of real estate for the erection of county buildings authorize the board of supervisors to "fix upon and determine" the site of any such building, if not previously located.²¹ The action requires a two-thirds vote of the members of the board and applies to "buildings for the support of the poor of the county," and for any courthouse, jail, clerk's office, or any other county building.

The state law also authorizes the board to designate a new site for any county buildings required to be at the county seat, when the removal does not exceed the limits of the village or city at which the county seat is situated or was previously located.²² This action likewise requires a two-thirds vote of the members of the board.

The Attorney General has ruled that the board of supervisors may erect an animal shelter on county property even though the township does not grant a building permit.²³

New Buildings, Authority to Erect

The statutes also grant the board of supervisors power "to cause to be erected the necessary buildings for poorhouses, jails, clerk's offices, and other county buildings, and to prescribe the time and manner of erecting the same."²⁴ This action requires a two-thirds vote of the members of the board. The Supreme Court has held that the requirement of a two-thirds vote of all members applies also to letting the contracts for work in the construction of the buildings.²⁵ The court in another early case held that a provision may be inserted in a building contract that payments to the contractor may be withheld as long as claims for work or materials are outstanding.²⁶

The Attorney General has ruled that a county may not purchase a building on the installment plan to be used for county purposes.²⁷

A board of supervisors may appoint a building committee of its own members and pay statutory compensation, or it may employ persons as county employees and specify their compensation and duties in the construction of a county building.²⁸ However, the Attorney General has stated that there is no authority to appoint mixed committees. The compensation of such a committee would appear to present difficulties.

Joint Public Buildings

The county and a village or city within the county are authorized by state law to acquire and maintain a joint public building, if the respective legislative bodies consider it expedient and for the public welfare and convenience that the offices of the county and village or city can be best maintained in the same building. The determination of the board of supervisors to this effect is to be declared by resolution and appear in the minutes.²⁹

The county and village or city involved are authorized to make necessary contracts with each other and with other persons for the acquisition and maintenance of a building. They may also contract for the acquisition of a site or sites, and for the erection, construction and maintenance of a building. They may act, either jointly and severally, in any manner which may be necessary for these purposes.

The county and village or city involved are also authorized to raise by taxation or loan a sum necessary for the payment of obligations undertaken in the matter; this is to be done in the manner and to the extent provided by law for acquiring and maintaining public buildings. It is the expressed intent of the act that counties and cities may enter into joint ventures to the same extent and with the same authority and power that is granted to counties and cities for the

purpose of maintaining separate public buildings.³⁰ The relationship between the county and village or city is to be fixed by contract. The contract becomes effective by a vote of a majority of the members of the respective legislative bodies.

County Planning Commission, Establishment

The board of supervisors may establish a county planning commission to act as agent of the county in adopting and carrying out a plan for the development of the county.³¹ This applies to constructions or improvements by county departments and agencies.

The planning commission is to consist of not less than 5 nor more than 11 members, and they are to represent important segments of the economic, governmental and social life of the county. The board of supervisors is to determine the basis of representation and the method of appointment, but a majority of the members may not hold other county offices or positions. The members are to have three-year terms. However, the initial terms may be varied to permit overlapping, and the terms of ex-officio members are to be the same as their respective official tenures. The board of supervisors may fill vacancies and may remove a member of the commission for non-performance or misconduct upon public hearing. All members of the planning commission are to serve without compensation, but they are to be reimbursed for actual and necessary expenses.³²

Funds for the operation of the commission are to be appropriated by the board of supervisors.

County Planning Commission, Powers and Duties

The planning commission is to elect a chairman from its membership; and it must appoint a secretary and fill other offices. The commission may also employ a director and technical staff to carry out its assigned powers and duties. The appointment of employees is subject to the same provisions of law as govern other civil service employees of the county.³³

The commission is to make and adopt a plan for the development of the county. The plan must be designed in accordance with present and future needs and must promote the health, safety, morals, order and general welfare of the inhabitants of the county. The commission is to cooperate with federal and state agencies and avail itself of the services of other planning organizations to avoid conflicts in over-all county plans. The planning commission may appoint advisory committees to assist in the consideration and solution of county problems.³⁴

When the county plan has been adopted in whole or in part and certified to the board of supervisors, work may be initiated on any project involving the expenditure of funds by a county board, department or agency only in compliance with the following procedures: Prior to the acquisition of land, and the construction or improvement of any physical facility, a full description of the project must be submitted to the county planning commission and the report of the commission must be received by the board of supervisors and the county board, department or agency sponsoring the proposal. The commission has power to promote public interest in the plan and it may distribute copies of the plan.³⁵

Regional Planning Commission

The legislature has also authorized the establishment of a regional planning commission, through which two or more political subdivisions, including counties, may combine in planning the physical, social or economic development of a region.³⁶

Purchase of Supplies

The board of supervisors may centralize the purchase of all supplies, merchandise, printing and articles of every description for all county offices, departments, and institutions, by the adoption of the legislative act on the purchase of supplies.³⁷ The act does not apply to counties having less than 75,000 inhabitants. Upon petition of not less than 25 electors of the county, the board of supervisors has the power by resolution to adopt the provisions of the act.³⁸

County Purchasing Agent

The state law empowers the board of supervisors to appoint a county purchasing agent and other representative agents and employees for the county as may be necessary to carry out any of the powers granted by law.³⁹ The Attorney General has said that a purchasing agent has exclusive power to purchase supplies for county offices, unless his authority has been expressly restricted.⁴⁰

General Powers of Business Management

As indicated in Chapter 4, the legislature has empowered the county board of supervisors to represent the county and to have the care and management of the property and business of the county in all cases where no other provision is made, but action under this authorization requires a two-thirds vote of the members of the board. The legislature has also empowered the county board to establish such rules and regulations in reference to the management of the interest and business concerns of the county, and in reference

to the mode of proceeding before the board, as the board may think necessary in all matters not especially provided for by law.⁴¹

Office Hours and Office Space

The Attorney General has ruled that the power of the board of supervisors to establish rules and regulations in reference to the management of the interest and business of the county permits the board to prescribe reasonable office hours for county offices. One ruling upheld a board resolution providing for closing offices on Thursday and Saturday afternoons. The resolution of another board, imposing a 40-hour week and closing offices on Saturdays, was also found valid. In the absence of action by the board, the county officials may, within reason, fix the hours for their respective offices.⁴²

The Supreme Court stated in a 1956 decision that the board of supervisors may assign space in courthouses or county buildings to the respective county offices and departments, and that the board may also reapportion the space from time to time as the conditions and circumstances may require. However, the Court held that a statutory provision requiring registers of deeds to furnish reasonable facilities for the inspection and examination of records and for making transcripts from the records did not provide for the direction or control of the county board of supervisors, and that, accordingly, the register of deeds and not the board of supervisors was to furnish the required facilities.⁴³ The Attorney General has ruled that the board of supervisors has power to determine whether or not the secretary of state may maintain a branch office in the county courthouse for the distribution of license plates by county officials or employees.⁴⁴

Notes to Chapter 13

1. MCL s. 46.17, MSA s. 5.340.
2. MCL s. 46.18, MSA s. 5.341.
3. MCL s. 46.11, par. 2, MSA s. 5.331, par. 2.
4. MCL s. 46.11, par. 1, MSA s. 5.331, par. 1.
5. MCL s. 211.7, MSA s. 7.7.
6. MCL s. 46.11, par. 18, MSA s. 5.331, par. 18.
7. MCL s. 46.11, par. 4, MSA s. 5.331, par. 4.
8. Op. Atty. Gen. 1947-48, pp. 258-9. April 18, 1947, No. 242.
9. MCL s. 46.201, MSA s. 5.406.
10. MCL s. 45.4, MSA s. 5.284.
11. MCL s. 45.5, MSA 5.285.
12. MCL s. 141.71, MSA s. 5.2301.
13. MCL ss. 141.72-4, MSA ss. 5.2303-4.

14. MCL s. 46.7, MSA s. 5.327.
15. Op. Atty. Gen. 1947-48, pp. 369-37. August 6, 1947, No. 473.
16. Op. Atty. Gen. 1952-54, pp. 285-6. January 15, 1954, No. 1735.
17. MCL s. 45.16, MSA s. 5.291.
18. MCL ss. 45.16, 45.18, MSA ss. 5.291, 5.293.
19. Op. Atty. Gen. 1947-48, p. 237. March 20, 1947, No. 207.
20. Op. Atty. Gen. 1955, pp. 638-40. November 16, 1955, No. 2288.
21. MCL s. 46.11, par. 3, MSA s. 5.331, par. 3.
22. MCL s. 46.11, par. 5, MSA s. 5.331, par. 5.
23. Op. Atty. Gen. 1949-50, p. 290. July 28, 1949, No. 981.
24. MCL s. 46.11, par. 6, MSA s. 5.331, par. 6.
25. Board of Supervisors, Wayne County v. Wayne County Judge, 1896 111 M33, 69 NW 83.
26. Knapp v. Swaney, 1885, 56M 345, 23 NW 162.
27. Op. Atty. Gen. 1955, pp. 599-600. November 3, 1955, No. 2273.
28. Op. Atty. Gen. 1952-54, pp. 168-9. June 4, 1953, No. 1647.
29. MCL s. 123.921, MSA s. 5.2351.
30. MCL s. 123.923, MSA s. 5.2353.
31. MCL s. 125.101, MSA s. 5.1192 (1).
32. MCL s. 125.102, MSA s. 5.1192 (2).
33. MCL s. 125.103, MSA s. 5.1192 (3).
34. MCL ss. 125.104-5, MSA ss. 5.1192 (4) (5).
35. MCL ss. 125.106-7, MSA ss. 5.1192 (6) (7).
36. MCL ss. 125.11-23, MSA ss. 5.3008 (1) (12).
37. MCL ss. 45.81-4, MSA ss. 5.1151-4.
38. MCL s. 45.97, MSA s. 5.1167.
39. MCL s. 46.13a, MSA s. 5.335.
40. Op. Atty. Gen. 1923-24, pp. 264-5. February 20, 1924.
41. MCL ss. 46.11, pars. 16, 17, MSA ss. 5.331, pars. 16, 17.
42. Ops. Atty. Gen. 1945, 46, p. 699. May 15, 1946, No. 4672; 1952-54, pp. 172-3; June 9, 1953, No. 1670.
43. Washtenaw Abstract Co. v. Mayer, 1956, 347 M 228, 79 NW (2a) 480.
44. Op. Atty. Gen. 1949-50, pp. 282-8. July 22, 1949, No. 1670.

CHAPTER 14

Taxation — Assessment, Allocation and Apportionment

General Nature of Taxation

The chapters of this manual which discussed particular county functions described the various purposes for which the board of supervisors could raise money by taxation and the limits, if any, imposed in respect to the particular purposes. The present chapter deals with the sources of taxation and the methods by which taxes are imposed, insofar as those matters involve the board of supervisors. The principal subjects involved are assessment, allocation and apportionment.

The counties of Michigan obtain their tax revenues primarily through the assessment of taxes on tangible property. Unlike townships, school districts, villages and cities, the counties do not receive tax money from the state for general expenditures, although money is received for the construction and maintenance of highways and roads within the county.

The assessment of property taxes within a county involves the board of supervisors, the county clerk, the county treasurer, and also other governmental officials and boards, such as township officials, city assessors, the county tax allocation board, the state board of equalization and the state tax commission. The principal steps in the levying of taxes are: assessment, equalization, the preparation of the budget, the allocation of the tax rate, the apportionment of taxes, and the spreading of the tax rolls.¹

Assessment of Property Values by Township and City Officials

The assessed values of particular pieces of property within a county are determined for tax purposes by an official of the township or city in which the property is located.

The values of the particular pieces of property in a township are assessed by the supervisor of the township.² He determines assessments for both county and township taxes, and he assesses property located in villages within the township for purposes of county and township taxes. However, the village assessor determines values separately for village taxes.

The assessed values of particular pieces of property located in a city are determined by the city assessor or a city ward assessor.³ That official determines assessments for both county and city taxes.

The assessed values determined by the supervisor, or the assessor, are set forth on an "assessment roll" which lists each parcel of land, giving the name and address of the owner, the legal description of the property, and the amount of the assessment.⁴

The state law lists several classes of exempt property. The taxable situs of property is determined as of December 31, each year.⁵

Assessed Values, Relation to Cash Values

Section 7 of Article X of the Constitution provides that all assessments are to be at the "cash value" of the property. The words "cash value" are defined in the General Property Tax Law to mean "the usual selling price" at the place where the property is situated at the time of assessment, "being the price which could be obtained therefor at a private sale, and not at forced or auction sale."⁶

Actually, most property assessments are said to be at less than cash value and the ratio between assessed values and cash values may vary among assessment jurisdictions.

Assessments, County Appraisal and Survey

The power of the board of supervisors to employ appraisers or other technical assistants to develop uniform methods of assessment throughout the county was the subject of several developments during the years 1954 to 1956. On February 18, 1954, the state supreme court handed down a decision that a board of supervisors did not have authority to employ an independent appraisal firm to make a county-wide appraisal of real and personal property.⁷ The court said that such authority was not a necessary and incidental power impliedly given to the board of supervisors in equalizing taxes. During 1955, the Attorney General ruled that there was no authority for the equalization committee of the board of supervisors to employ personnel to assist in equalization.⁸

However, during 1956, the legislature, through Public Acts 19 and 30 of that year, granted the board of supervisors express powers in this regard. One enactment authorizes the board to employ an independent appraisal firm to make a county-wide appraisal. The purposes of the appraisal would be to assist local assessing officers in arriving at a true cash value for assessment, to assist the board of supervisors in reviewing and equalizing assessments, and to provide a uniform basis of assessment throughout the county. The expense of such an appraisal may be paid from the general fund of the county.⁹ The Attorney General held that this authority did not permit a township to engage a private appraisal firm and in 1958 the legislature authorized a township board to employ an independent ap-

praisal firm to make a township-wide appraisal, or to assist the supervisor in his assessing duties, as directed by the board. The appraisal firm may be paid out of the general fund of the township. This is in addition to the previously existing authority of the township board to appoint two assessors as subordinates to the supervisor.¹⁰

The legislature also authorized the board of supervisors to establish, by a resolution of a majority of its members, a department to survey assessments. In this connection, the board may employ technical and clerical assistants. Moreover, the board may, through this department, furnish assistance to local assessing officers, including the development and maintenance of accurate property descriptions, the discovery, listing and valuation of properties for tax purposes, and the development and use of uniform standards and technique for the assessment of property.¹¹

Assessments, Review in Township or City

The action of a township supervisor or a city assessor in determining the value of property for assessment of taxes, may be appealed to a board of review within the respective township or city. This procedure has been established by the state legislature.¹² A further appeal may be taken to the State Tax Commission. The assessments are not subject to review by the county board of supervisors, except as results from the procedure for county equalization.

Assessments, County Equalization

The General Property Tax Law of Michigan provides that the board of supervisors, at its April session in each year, is to examine the assessment rolls of the various townships, wards or cities, and ascertain whether the property in the respective townships or cities "has been equally and uniformly assessed at true cash value."¹³ If, on examination, the board finds that the assessments are relatively unequal, the board is to equalize the assessments by adding to or deducting from the aggregate valuation of the taxable property in any jurisdiction an amount which in the board's judgment, will produce a sum which represents the true cash value of the property. The amount added or deducted from the valuations in any jurisdiction is to be entered in the records. The records are likewise to show the aggregate valuations of the taxable property in each jurisdiction in the county as determined by the board. The board is also required to make necessary alterations in the description of the land on the rolls. After a roll has been equalized, it is to be certified by the chairman and clerk of the board and delivered to the supervisor of the proper township ward or city.

The process of equalization does not result in the assessed value of particular pieces of property being changed on the assessment rolls of the townships or cities. Rather, it relates to the total assessed value in each township or city. The first step in equalization is usually the determination of the ratio of assessed value to "cash value" in each assessment jurisdiction. This is sometimes done by reviewing the assessed values of "sample" pieces of property within each particular township or city. On the basis of these samples, an equalization factor is determined for each assessment jurisdiction (township, ward or city), and this factor is applied to the total assessed value of property within the particular jurisdiction.

Equalization is the responsibility of the county board, but the procedure is generally to have a committee of board members consider the matter in detail and make recommendations to the full board. The board then may act upon the report of the equalization committee.

The board of supervisors is to commence equalization at its regular meeting on the Tuesday following the second Monday in April each year and is to complete equalization prior to the first Monday in May. By this last date, the assessment rolls are to be tabulated by the county clerk and forwarded to the state tax commission. The equalization by the county board may be appealed to the state tax commission by any assessment jurisdiction, or by any supervisor who voted against the equalization. Appeals must be taken within five days after the adjournment of the county board of supervisors.¹⁴

Assessments, State Equalization

The state also undertakes an equalization of assessments. Its object is to assure uniformity among counties, but it has had the general effect of raising the amount of total assessed value. State equalization is required by Section 8 of Article X of the Michigan Constitution. It began when there was a state property tax and was held necessary to make the burden of such tax uniform throughout the state. After the state property tax was repealed, state equalization continued for a number of reasons. For one thing, it is used in the distribution of state aid payments to school districts. Likewise, it is important in connection with taxes for intercounty or multi-county projects. In addition, a decision of the Michigan Supreme Court in 1954 held that state equalization is also intended to make local taxation uniform. The Court also held that the over-all tax rate limitation of 15 mills (which will be discussed shortly) is ap-

plicable to the state-equalized values rather than the county-equalized or the original assessed values.¹⁵

State equalization is undertaken by the state board of equalization.¹⁶ This board is composed of three members of the state tax commission and two other members appointed by the governor. Any county may be represented before the state board of equalization by a person or persons appointed for the purpose by the board of supervisors.¹⁷

Allocation, Tax Rate Limitation

The total amount of taxes which may be assessed against property for all purposes in any one year is limited by Section 21 of Article X of the Constitution. This was adopted at the general election on November 8, 1932, and modified in part in 1948. The limitation is 1½ per cent, or 15 mills on the "assessed valuation" of the property, with two exceptions. One exception relates to taxes levied for the payment of interest and principal on obligations incurred prior to the adoption of the amendment. These taxes are to be assessed separately. The other exception is that the limit may be increased, for a period of not exceeding 20 years at any one time, to no more than 5 per cent, or 50 mills of assessed valuation, by a majority vote of the electors of the assessing district, or when provided for by the charter of a municipal corporation.

The limitation is also set forth in the Property Tax Limitation Act of 1933, which includes the procedure necessary to carry into effect the constitutional provision.¹⁸

The 15 mill tax rate limitation affects counties, townships, school districts and port districts. (There is at this time only one port district in Michigan. This is in Monroe County). The tax rate limitation does not apply to cities and villages. There was some question about this when the Constitutional amendment was adopted in 1932, but a decision of the Michigan Supreme Court during 1933 held that cities and villages did not come under the limitation unless they adopted charter provisions to that effect.¹⁹ Eleven cities adopted such provisions, but financial difficulties resulted and in 1949,²⁰ the legislature adopted a complex provision which has the effect of excluding city taxes in the allocation of the 15 mill rate, except for a very minor amount.²¹ This last is the amount of one-thousandth of one mill on the assessed valuation of a city or village. It is to be allocated to any city or village which has provided for a maximum tax rate limitation in its charter.²²

County Tax Allocation Board, Membership

Inasmuch as the taxes of different "local units," including the county, the township and the school district, within which a piece of property is located, cannot exceed a total of 15 mills, a means of allocating the maximum rate is necessary. For this purpose, the legislature has provided for the establishment of county tax allocation boards.²³

Except in certain situations noted below, the county tax allocation board is composed of five members. Three of these are county officials: the county treasurer, the county school superintendent, and the chairman of the board of county auditors or, if there is no such board, then the chairman of the finance or ways and means committee of the board of supervisors. One of the other members is to be a member of a school board of a district in the county maintaining 12 grades of school. He is generally to be selected by the judge or judges of probate of the county. However, in counties containing one or more municipal corporations having a population of 15,000 or over (according to the last United States census), this member is to be a member of the board of a school district lying wholly or principally within one such municipal corporation. The statute provides that the fifth member should be a member of a municipality within the county. He is to be selected by the probate judge or judges of the county, except that in counties having one or more municipalities with more than 10,000 population (according to the last census), the member is to be a resident of a municipality. Moreover, if there are municipalities subject to the tax rate limitation, then such member is to be an official of such a municipality, if there is but one such municipality, the member is to be selected by the governing body of that municipality.

The Attorney General has ruled that a home rule city is not entitled to have a member of its governing body on the tax allocation board since the removal in 1948 of the 15 mill limitation on home rule cities.²⁴

The member of the board selected by the probate judge is to be selected on or before the second Monday of April in each year and to hold office for a term of one year. The tax allocation board is to elect one of its members as chairman and the county clerk is to act as clerk of the board. The latter is required to keep a full and accurate record of all the board's proceedings. The board may employ clerical and other assistance as needed.²⁵ The county clerk is entitled to the same per diem compensation as a member of the tax allocation board.²⁶

The state law provides that the members of the tax allocation board are to receive compensation for their services at the same rate per diem and mileage as authorized for members of the board of supervisors. The per diem and mileage of the board and its members, when certified by the board to the county treasurer, is to be paid from the general fund of the county, and the board of supervisors is empowered by the statute to raise by taxation amounts necessary for this purpose. However, no member of the tax allocation board may receive compensation for his services for more than 20 days in any one year unless authorized by a resolution of the board of supervisors.²⁷ The Attorney General has ruled that under this provision, the county treasurer and the county school superintendent are entitled to extra compensation for their services as members of the tax allocation board.²⁸

The tax allocation board is required by law to meet for organization purposes on the third Monday of April at the office of the county clerk. Subsequent meetings may be held as the board decides. The board may act by a majority vote of its members, and it may order any officer or employee of any "local unit," (that is, the county, any township, school district, port district or other jurisdiction subject to the tax rate limitation law), to appear before the board and testify, or produce books, papers and records of the local unit. In addition, the board or its agents may examine the books, papers, and records of any local unit wherever such documents may be located. The state law also provides that an officer or employee of any local unit has the duty to appear before the board to testify and to produce documents in his custody or to allow them to be examined when ordered by the tax allocation board.²⁹

County Tax Allocation Board, Review of Local Budgets

Each county as well as each township, school district and other local units subject to the tax rate limitation must prepare a budget containing an itemized statement of proposed expenditures and estimated revenues and file it with the county tax allocation board on or before the third Monday in April of each year.³⁰ The state law also requires that the county or other local unit list separately items for payment of interest and principal on obligations incurred prior to December 8, 1932 and those on obligations incurred subsequent to that date.

Judgments against the county, the board of supervisors, or any county officer in name of his office, are dealt with separately in the budget because they are not subject to execution but are to be

levied and collected as county charges, and when collected are to be paid by the treasurer.³¹

The state law provides that the tax allocation board is to examine the budgets and statements which the county and other local units have filed with it, and determine the tax rates, exclusive, of debt services rates, which would be required by the proposed budgets.³²

Tax Allocation Board, Ascertainment of Local Tax Rates

The principal function which the tax allocation board is required to perform is that of ascertaining whether the tax rates of the county, the townships and the school districts (and any other units which may come within the limitation) proposed to be levied on property located within the area of any local unit exceeds the net tax rate limitation. If the total tax rates do not exceed the limitation, the board is to approve the tax rates as the maximum rates. If the total tax rates exceed the limitation, it is required to proceed in accordance with three rules.³³

The first rule sets forth minimum tax rates. These are three mills for the county, four mills for school districts and one mill for townships. However, if the average tax rate levied for the operating purposes of any of these units for its last three fiscal years is less than the minimum tax rate, such average tax rate is to be the minimum tax rate allowed to the unit. The state law also provides that no local unit is to be allowed a tax rate in excess of what would be required according to its proposed budget.

The second rule authorizes the tax allocation board to divide the balance of the net limitation tax rate among all local units "after due consideration of the needs of the several local units, the importance to the public of functions of local units which might have to be curtailed, the need of local units for construction or repair or public works, the proposed or accomplished transfer of functions from one local unit to others, and any other facts or matters concerning the operations of local units which the board may deem relevant." The law states that the maximum tax rate is to be the amount of the minimum rate plus the amount determined under this second rule.

The third rule is that the board is to approve a maximum tax rate for each local unit which has voted to increase the total tax rate limitation as provided for by law.

The supreme court held in 1954 that the action of the county allocation board in dividing the maximum millage between school districts and counties is not subject to alteration by the county board of supervisors.³⁴

Apportionment of Taxes

The state law provides for an apportionment of state taxes among the counties and an apportionment of county and state taxes among the townships in the county.

The apportionment of state taxes is made by the auditor general on or before September 1 of each year, and is to be transmitted to the county clerks in advance of the October session of the board of supervisors.³⁵

The board of supervisors, at its October meeting each year, is to ascertain the amount of county taxes to be raised and to apportion such amount among the several townships in proportion to the taxable real and personal property.³⁶ The board is also to apportion, in the same manner, the state tax and the indebtedness of the county to the state.

A 1955 opinion of the Attorney General held that the board of supervisors in its October meeting is required to spread the general property tax rates without distinction as to the nature of the property involved. The opinion also states that the board is to impose rates in accordance with the final action of the tax allocation board and such additional rates as may have been voted by the respective taxing units.³⁷

Collection of Taxes

The collection of property taxes is primarily the responsibility of township and city treasurers³⁸ who are to pay county and state taxes to the county treasurer.³⁹

In a county having a population of 400,000 or more, the board of supervisors, by a resolution of a majority of its members, may provide for the collection of delinquent personal taxes by the county treasurer.⁴⁰

Notes to Chapter 14

1. See generally, Claude R. Tharp, "Property Tax Administration in Michigan," and Robert H. Pealy, "A Comparative Study of Property Tax Administration in Illinois and Michigan," Institute of Public Administration, University of Michigan.
2. MCL ss. 211.10, 211.18, MSA ss. 7.10, 7.18.
3. MCL ss. 211.18, 85.3, 117.3, MSA ss. 7.8, 5.1625, 5.2073.
4. MCL s. 211.24, MSA s. 7.24.
5. MCL ss. 211.8-13, MSA ss. 7.8-13, Michigan Law and Practice Encyclopedia, Vol. 21, "Taxation," Secs. 21-78.
6. MCL s. 211.27, MSA s. 7.27.

7. Wright v. Bartz, 1954, 339 M 55, 62 NW (2d) 458.
8. Op. Atty. Gen. 1955. December 8, 1955, No. 2340.
9. MCL s. 211.23a, MSA s. 7.23 (1).
10. Op. Atty. Gen. 1957, p. 228. May 1, 1957, No. 2997, Public Act No. 6, 1958.
11. MCL s. 211.34, MSA s. 7.52.
12. MCL ss. 211.28-33, MSA ss. 7.28-33.
13. MCL s. 211.34, MSA s. 7.52.
14. MCL ss. 209.5, 211.34, MSA ss. 7.605, 7.52.
15. Pittsfield School District v. Washtenaw County, 1954, 341 M 388 67NW (2d) 165.
16. MCL ss. 209.1-5, MSA ss. 7.601-5.
17. MCL s. 209.7, MSA s. 7.607.
18. MCL ss. 211.201-.217, MSA ss. 7.61-77.
19. School District of City of Pontiac v. City of Pontiac, 1933, 262 M 338 247 NW 474.
20. Robert H. Pealy, "A Comparative Study of Property Tax Administration in Illinois and Michigan," Institute of Public Administration, University of Michigan, 1956, p. 49.
21. MCL s. 211.211 (e), MSA s. 7.71 (e).
22. MCL s. 211.211 (b), MSA s. 7.71 (b).
23. Morley Brothers v. Carrallton Township Supervisor, 1945, 312 M 607 at 611, 20 NW (2) 743; MCL s. 211.205, MSA s. 7.65.
24. Op. Atty. Gen. 1948-50, pp. 216-7. May 10, 1949, No. 965.
25. MCL s. 211.206, MSA s. 7.66.
26. MCL s. 211.207, MSA s. 7.67.
27. *Ibid.*
28. Op. Atty. Gen. 1933-34, pp. 288-290. July 13, 1933.
29. MCL s. 211.208, MSA s. 7.68.
30. MCL ss. 211.209-210, MSA ss. 7.69-70.
31. MCL s. 624.7, MSA s. 27.1656.
32. MCL s. 211.211, MSA s. 7.71.
33. *Ibid.*
34. Pittsfield School District v. Washtenaw County, 1954, 341 M 388.67 NW(2d) 165.
35. MCL s. 211.35, MSA s. 7.53.
36. MCL s. 211.37, MSA s. 7.55.
37. Op. Atty. Gen. 1955, pp. 544-6. October 17, 1955, No. 2331.
38. MCL s. 211.44, MSA s. 7.87.
39. MCL s. 211.55, MSA s. 7.99.
40. MCL s. 211.56, MSA s. 7.100.

CHAPTER 15

Borrowing

Limitations on Borrowing

The power of the legislature to authorize borrowing by a county is limited in a number of ways.

Section 12 of Article VIII of the Constitution provides that no county may increase its indebtedness beyond 3 per cent of its assessed valuation, except that a county which has an assessed valuation of five million dollars or less may increase its total debt to 5 per cent of assessed valuation. The Attorney General has ruled that this limitation does not apply to highway or drain bonds which are not a direct county obligation but does apply to drainage district bonds.¹

The further constitutional limitation on the borrowing of funds for the construction or repair of buildings and bridges was noted in Chapter 13. This imposes a limit of either one thousand dollars or one-tenth of one mill of assessed valuation, whichever is greater, unless a larger amount has been approved by the electors.

Moreover, the legislature has imposed certain limitations. The various statutes which authorize borrowing in one manner or another also impose numerous conditions and restrictions. There are also statutes which are largely regulatory in character, such as the Municipal Finance Act and the law on sinking funds. These will be summarized later in the chapter.

In addition, the Attorney General has issued opinions on the limited authority of the county. For instance, he has ruled that a county is not justified in incurring an indebtedness without an apparent means of paying it.² Likewise he has stated that the proceeds of a bond issue may be used only for the purpose for which the bonds were sold, and that this limitation applies even to a surplus remaining after the express purpose has been fulfilled. The excess is to be used for retirement of the bonds.³

Statutory Authorizations in Particular Areas

Most of the state laws which grant the county power to borrow funds are particular in their scope and, accordingly, they have been discussed in previous chapters of this manual in connection with the particular activity involved.

Thus, the power to borrow funds for a county public hospital and for an agricultural fair grounds was discussed in Chapters 4 and 6, respectively. Borrowing for the construction of highways and bridges was described in Chapter 9. In this last matter, the General Highway Law provides, among other things, that no indebtedness may be created by the board of county road commissioners under the provisions of that law without the approval by a two-thirds vote of the board of supervisors at a regular meeting.⁴

A number of the statutory provisions discussed in Chapter 10 grant power to borrow funds for such matters as drainage district improvements, water supply and sewage disposal systems, and connecting water or disposal systems.

The power to borrow money for the construction and repair of buildings and bridges was discussed in Chapter 13. This, as noted before, is considerably restricted without approval of the electorate.

The county may also borrow from such funds as have been deposited with county treasurer to finance care of cemetery lots. This will be discussed in Chapter 16.

General Statutory Provisions on Borrowing

In addition to the statutes dealing with borrowing in particular situations, there are also statutory provisions which deal more or less generally with the power to borrow funds.

The general powers and duties of the board of supervisors include, among other things, the authority (1) to borrow or raise by tax such sums as may be authorized by law, and (2) to provide by taxation for the payment of any loan made by the county. In this last, payment must be within 15 years from the date of the loan.⁵

There are also four statutes, affecting the counties, which deal specifically with the manner in which funds may be borrowed for authorized purposes. Two of these statutes relate only to counties. One is the act entitled "Permanent Improvements by Counties" and it involves approval by the electors of the county at a referendum. There is also a statute dealing with county sinking funds. The other two relevant statutes apply to other local governmental units as well as to counties. These are the Revenue Bond Act of 1933 and the Municipal Finance Act of 1943.

Borrowing for Permanent Improvements With Approval of Electorate

The statute entitled "Permanent Improvements by Counties" was enacted in 1923 and amended in subsequent years. It authorizes

counties to borrow funds on the faith and credit of the county for certain permanent improvements, within the total debt limit, provided the borrowing meets certain specified conditions and also is approved by a majority of the electors voting at an election designated for the purpose.⁶ This authorization is expressly stated to be cumulative in its effect, and where a previous act authorizes borrowing money or issuing bonds, either act may be followed at the choice of the county authorities.⁷

The statute relates to "any permanent improvement or improvements in, or additions to or about roads, highways, bridges, boulevards, parks, buildings, courthouses, infirmaries, sanatoria, or any other permanent improvements, authorized by law, relating to county property or to public property under the control or management of county authorities."

The board of supervisors, by a resolution of a majority of the members, may authorize and direct the borrowing or raising by loan, of such sums, as in the board's judgment, may be needed. This authority is, of course, subject to the constitutional and statutory debt limits. The statute further provides that the board of supervisors may, in its resolution, authorize and direct the issue and sale of bonds of the county to secure the repayment of the sums borrowed or raised by loan.

The statute provides that the bonds may draw interest at no more than 6 per cent, payable semiannually. The bonds are to be payable within 30 years. Unless the bonds are payable serially beginning in five years or less, the board of supervisors is required to provide a sinking fund, by annual taxes, sufficient to take care of the bonds when they become due. The sinking fund may be invested in municipal securities of the state, or of the United States, and the income from such securities is to become a part of the fund.⁸

The statute sets forth requirements relating to the contents of the board's resolution, the manner of submitting the question to the electors, the required notice, and the election procedure.⁹ The Attorney General has ruled that the matter may be submitted at a special election at any time selected by the board of supervisors.¹⁰ The Supreme Court has held that irregularities in not publishing and posting notice of elections for the full time required did not invalidate the election so long as the record did not disclose that such irregularities operated to the disadvantage of some particular electors.¹¹ However, inexact procedure might involve the expense of a lawsuit even if eventually sustained.

Without submitting the matter to a vote of the electors, the board of supervisors may by a majority vote of its members authorize expenditures from any funds on hand not raised by taxation for alterations to county public buildings, but this may not exceed one mill of the assessed valuation of the county. The authorization relates only to funds not raised by taxation.¹²

Borrowing Under Revenue Bond Act

The county is classed as a "public corporation" for the purpose of the Revenue Bond Act of 1933. This statute authorizes public corporations to acquire, construct and improve public improvements, to operate and maintain them, and to furnish the service, facilities, and commodities of such public improvements to users either within or outside the corporate limits.¹³

The statute permits the whole or a part of the cost of establishing such improvements to be defrayed by borrowing funds and issuing negotiable bonds therefor. However, the principal and interest must be payable solely from the net revenues derived from the operation of the improvement.¹⁴

The act is cumulative in its effect.¹⁵ On the one hand, it increases the facility of the county to borrow because it does not require the approval of the electors of the county. On the other hand, the bonds do not carry the full faith and credit of the county, and they must be payable out of net revenues. Thus, it permits income producing projects to be financed in the manner of business undertakings.

The issuance of bonds under this statute involves the adoption of an ordinance describing the nature of the project, the estimated cost, the amount of bonds, the interest rate, and the due dates. This ordinance, unlike ordinances generally, is not subject to approval by the governor. The bonds must mature serially, the first within 5 years with "the last installment payable in not longer than the estimated period of usefulness of the public improvement for which the bonds were issued, provided that in no event may the last installment be payable more than 40 years from the date of the bonds." Interest may not exceed 6 per cent. Various other requirements are also specified.¹⁶

The Municipal Finance Act

The county is deemed to be a "municipality" for the purposes of the Municipal Finance Act.¹⁷ This act, among other things, places the credit of the county under the direction of the municipal finance commission of the state. The commission is to administer the act, and

in this it may examine the books and records of a county as well as issue rules, regulations and orders to enforce compliance.¹⁸

A county may not borrow money or issue obligations payable out of taxes or special assessments except in accordance with the Municipal Finance Act. The law, among other things, limits the interest rate to 6 per cent and discount to 10 per cent. It also requires issues of \$10,000 or more to be sold at a public sale after published notice. An exception is made for sales to the federal government. Various other conditions are imposed.¹⁹

The Municipal Finance Act authorizes a county, by a resolution of its board of supervisors, and without a vote of its electors but subject to the prior permission of the Michigan Finance Commission, to borrow money and issue notes of the county in anticipation of the collection of taxes for the next succeeding fiscal year, or for the current fiscal year.²⁰

The Municipal Finance Act also provides that any bonds issued by the county from taxes or special assessments are subject to the requirements of that act as well as other relevant laws. These requirements relate to such matters as the term of the bonds and their serial nature.²¹ There are also special provisions relating to refunding bonds, certificates of indebtedness, debt retirement funds and sinking funds.²²

Duty to Levy Taxes to Pay Obligations

The Municipal Finance Act provides that whenever a county has outstanding any bonds, refunding bonds, notes or certificates of indebtedness payable from taxes, every officer or official body charged with any duty in connection with determining or levying of taxes has the duty of including within the taxes for each year the amounts needed for interest, principal and sinking fund requirements.²³

Power to Pledge Credit of County

As indicated in previous discussions the board of supervisors has only limited authority to pledge the full faith and credit of the county for the payment of principal and interest on bonds or other loans. In the statute on "Permanent Improvement by Counties" the legislature has required that the electors of the county approve the action of the board extending or pledging the full faith and credit of the county.

There are statutory provisions permitting the board of supervisors to pledge faith and credit of the county without the approval of the electors, but these authorizations are limited in their scope. Thus,

in counties having a population of 150,000 or more, the board by a majority of its members, may pledge the faith and credit of the county for the prompt payment of principal and interest on drainage district bonds.²⁴ Another statute allows similar action on bonds for a water supply or sewage disposal system but requires approval by three-fifths vote of the members of the board of supervisors.²⁵ However, for connecting water or sewage systems, approval by a majority vote of the board members is sufficient.²⁶

There are also limitations on the total extent to which the faith and credit of the county may be pledged, as noted previously in the discussion of the Municipal Finance Act.

Sinking Fund Requirements; Commissioners

Before a county may issue bonds, except serial bonds and bonds having a special security, the board of supervisors must establish a sinking fund by passing a resolution providing for an annual tax assessment during the life of the bonds. The tax is to be sufficient to pay interest as it accrues and principal at maturity. The tax assessment may be reduced by the annual earning on the sinking fund. The county treasurer is to keep a distinct account for each issue of such bonds.²⁷

The sinking fund is to be under the exclusive control of a board of sinking fund commissioners. They are the county treasurer, the county clerk, the register of deeds, the chairman of the board of supervisors and the chairman of the finance committee of the board of supervisors. If the county has a board of auditors, the chairman of that board is to serve rather than the register of deeds and the chairman of the finance committee.²⁸ The law sets forth the procedures to be followed by the board of sinking fund commissioners.²⁹

Defaulted Bonds

The legislature has defined the conditions under which a county, or other political subdivision of the state, may re-purchase its bonds which are in default of principal or interest.³⁰ The county has also been granted power to exercise rights available under the federal bankruptcy act.³¹

Notes to Chapter 15

1. Ops. Atty. Gen. 1926-28, pp. 498-500. October 5, 1927, 1930-32, pp. 489-490, March 1, 1932.
2. Op. Atty. Gen. 1943-44, pp. 256-8. February 1, 1943, No. 24677.
3. Op. Atty. Gen. 1952-54, pp. 387-8. August 12, 1954, No. 1782.
4. MCL s. 247.427, MSA s. 9.723. See also Op. Atty. Gen. 1933-34, pp. 25-255, May 5, 1933.

5. MCL s. 46.11, par. 7.8, MSA s. 5.331, par. 7.8.
6. MCL ss. 141.61-2, MSA ss. 5.2251-2.
7. MCL s. 141.65, MSA s. 5.2255.
8. MCL s. 141.61, MSA s. 5.2251.
9. MCL ss. 141.62-4, MSA ss. 5.2252-4.
10. Op. Atty. Gen. 1952-54, pp. 390-1. August 13, 1954, No. 1805.
11. Bay County v. Hand, 1932, 257 M 262, 241 NW 256.
12. MCL s. 141.61a, MSA s. 5.2251 (1).
13. MCL ss. 141.101, 141.104, MSA ss. 5.2731, 5.2734.
14. MCL s. 141.107, MSA s. 5.2737.
15. MCL s. 141.102, MSA s. 5.2732.
16. MCL ss. 141.106-133, MSA ss. 5.2736-63.
17. MCL s. 131.2, MSA s. 5.3188 (2).
18. MCL ss. 132.1-2, MSA ss. 5.3188 (3) (4).
19. MCL ss. 133.1-2, MSA ss. 5.3188 (6) (7).
20. MCL s. 134.1, MSA s. 5.3188 (13).
21. MCL ss. 135.2-5, MSA ss. 5.3188 (22)-(25).
22. MCL ss. 136.1-17, MSA ss. 5.3188 (28)-(44).
23. MCL s. 137.1a, MSA s. 5.3188 (45a).
24. MCL s. 280.276, MSA s. 11.127.6.
25. MCL s. 123.741, MSA s. 5.570 (11).
26. MCL s. 46.175c, MSA s. 5.2767 (5.3).
27. MCL ss. 141.11-141.20, 141.31, MSA ss. 5.631-5.640, 5.651.
28. MCL s. 141.32, MSA s. 5.652.
29. MCL ss. 141.33-38, MSA ss. 5.653-8.
30. MCL ss. 141.211-4, MSA ss. 5.3251-4.
31. MCL s. 141.201, MSA s. 5.3464.

CHAPTER 16

Accounting for Receipts and Disbursements

Board of Auditors

The extent of the powers and duties of the board of supervisors in respect to the accounting for county funds depends in large part on whether the county has a board of auditors. If there is such a board, then that board rather than the board of supervisors, is to undertake certain functions, such as the designation of deposit banks and the auditing of claims. If there is no board of auditors, these functions are to be undertaken by the board of supervisors, or in some matters, by its finance committee if there is one. The nature and authority of the finance committee are prescribed by statute and these were described in Chapter 2. The present chapter will first consider the nature of the board of county auditors.

Board of Auditors, Establishment

A state law, enacted in 1913, authorizes the board of supervisors to submit the question of establishing a board of county auditors to a vote of the electors of the county.¹ This applies to any county, except those for which provision had previously been made for a county auditor or board of auditors.

The submission of the matter to the electors requires the majority vote of the members of the board of supervisors. The vote is to be taken at an October session. The statute sets out the form of a resolution for the purpose. The question may be submitted at a general election. At least three weeks must intervene between the adoption of the resolution and the time of holding the election. The county clerk is responsible for giving notice to the electors, in accordance with the procedure set forth in the statute. The manner of holding the election is the same as for other elections. The question is considered adopted if "upon the canvas of the votes cast at such election, it shall appear that the majority is in favor of the adoption."²

When a board of auditors has been established, the board of supervisors may not abolish it and assume its duties.³

There are statutes dealing exclusively with the board of auditors for Wayne County.⁴ These statutes will not be considered here because of their limited application, but the general purpose of the board of auditors in Wayne County is the same as in other counties.

Board of Auditors, Membership

The statute does not clearly indicate when the first members of the board of auditors are to be selected; in general, selection is made at the October session of the board of supervisors, and the term of office begins the first day of the following January. The statute permits the selection of a board with staggered terms. The board of supervisors may elect by ballot a board of auditors which is not to exceed three members, one of whom the board of supervisors is to designate as chairman. If the board of auditors is to have one member, the term is one year; if two members, the terms are for one and two years; and if three members, the terms are for one, two and three years. The successors are to be elected for three-year terms. Election requires a majority vote of all members of the board of supervisors. A vacancy is to be filled by the judge of probate, county treasurer and prosecuting attorney.⁵

The statute prescribes certain rules of eligibility for members of the board of county auditors. No person holding any office, either elective or appointive in the county, or in any township of the county, or of the state of Michigan, may hold the office of county auditor. Nor is any person not an elector of the county eligible for the office. Moreover, no more than two members of any board of auditors may be affiliated with the same political party. No member of the board of auditors may be directly or indirectly interested in any contract with the county which may involve the expenditure of any county money, or, in the sale of supplies to the county, or in the performance of any paid services of the county other than the services as a member of the board.⁶ The law provides penalties for any member of the board of auditors who enters into collusion with any claimant or other person to defraud the county or wilfully violate the relevant law or wilfully or grossly neglect his duties.⁷ Each member of the board of auditors is to provide a bond of \$2,000, with sureties approved by the circuit judge.⁸

The county clerk is to be clerk of the board of auditors and keep a record of all meetings. Either the clerk or his deputy is to attend the meetings.

Each member is to receive \$5.00 per day for time actually spent and also actual expenses incurred while employed in discharging the duties of the office. However, the board of supervisors may provide the chairman of the board of auditors with an office at the courthouse, and he may receive such compensation as the board of supervisors may determine. Such compensation would be payable monthly

in lieu of fees. The clerk is to serve without compensation in addition to his regular salary.⁹

The prosecuting attorney is to act as legal advisor to the board of auditors without compensation other than his regular salary.¹⁰

Board of Auditors, Meetings

Two members of the board of auditors constitute a quorum for the purpose of holding meetings.¹¹

The board of auditors is to meet on the first Monday of each month. Meetings are to continue until the business is disposed of, but members receiving per diem compensation are not to be paid for more than five days in any one month. However, the board of supervisors may by resolution require services for more than five days per month and fix the compensation in excess of the stated amount.¹²

Board of Auditors, Powers and Duties

The board of auditors is expressly authorized and directed: (1) to audit claims against the county and draw warrants for allowed amounts, (2) to purchase books, stationery, printed matter, furniture and general supplies for the county, its officers and the circuit court, (3) to examine the books and accounts of all county officers, (4) to recommend to the board of supervisors the number of clerks and other help for the county offices and the compensation for those employed, (5) to establish a system of records and accounts in the various county offices, (6) to approve official bonds, (7) to take testimony as to the legality of claims, (8) to publish all claims allowed, (9) to prepare before October 1 each year an estimate of necessary expenses of the county, (10) to have charge of the courthouse and other buildings, and (11) to contract for the printing of proceedings of the board of supervisors, of all official ballots, and other required printing.¹³

The law provides that no warrant may be drawn or issued by the board of auditors except for the amount of a "just claim" against the county which has been duly allowed by the board of auditors.¹⁴ The supreme court stated in a 1946 opinion that the expression "just claim" has "no peculiar or fixed meaning," and that it must be "regarded as including obligations of the county that are lawfully due and payable and to the payment of which the county has no legal defense. The question of liability and the extent thereof must be determined in each case on the basis of the facts and the law."¹⁵

In an earlier case, involving the authority of a board of county auditors, the supreme court said that, while the board of auditors

may contract for services, it may do so only for such services as are chargeable against the county.¹⁶ In that case, the court held that the county was not liable for the cost of vaccinating 10,000 school children and teachers against small pox, because the state legislature had placed the burden of epidemics of communicable diseases upon the cities, villages and townships rather than upon the counties.

Public Funds; Deposit of Receipts

The legislature has provided that all moneys which come into the hands of any officer of the county pursuant to a law authorizing him to collect or receive the money are to be called "public moneys."¹⁷

The supreme court has stated that "public moneys" mean those moneys "which are raised by a governmental unit or agency for the conduct of government or for governmental purposes," and not those "which incidentally fall into the hands of some governmental agent, while such agent is performing his lawful functions."¹⁸ These statements were made by the court in deciding that alimony payments, deposited with the statutory friend of the circuit court, were not public money and that when unclaimed were not to be deposited in the general fund of the county but rather forfeited to the state.

There are a number of statutes relating to the handling of public funds of the county, as well as of other governmental units,¹⁹ but the powers and duties of the board of supervisors are dealt with mainly in a statute which relates exclusively to the counties.²⁰ The other statutes tend to duplicate that law, so far as the county is concerned.

The law relating to the deposit of receipts by the county provides that certain powers and duties are to rest with either the board of supervisors, or the board of county auditors, and it provides further that where a board of auditors exists, powers and duties are to be exercised and performed exclusively by the board of auditors.²¹

The statute on deposit of receipts by the county sets forth that the county treasurer must deposit daily all cash, drafts and checks received by him as treasurer. The deposit is to be made in banks designated by the board of supervisors or the board of county auditors. However, if there is no designated bank at the county seat, deposits may be made as soon as practicable after receipt. Likewise, the treasurer may keep in his office a reasonable sum necessary to conduct official business. Money on deposit is to receive interest at a rate approved by the board of supervisors or the board of auditors.

The interest is to be computed on average daily balances and credited semi-annually.²²

The selection of banks of deposit by the board of supervisors, or board of auditors, is to be made after receipt of sealed bids in reply notices sent by the county clerk.²³ The banks selected are to file bonds before deposits are made.²⁴

The Penal Code of the state provides that an officer charged with receiving, keeping or disbursing public money, is required not to commingle such funds with those of his own or any other person, firm or corporation.²⁵

Any township or county officer (other than a township treasurer) who pays money to the county treasurer is required to file a duplicate receipt with the county clerk. The clerk, in turn, is to present the receipts to the board of supervisors at its next meeting. In Wayne County the clerk is to present the receipts to the board of auditors.²⁶

The Attorney General has ruled that an action against a depository of county funds for interest should be brought by the board of supervisors rather than by the county treasurer.²⁷

Public Funds, Investment, Interest

The board of supervisors, or the board of auditors, may invest public money received by the county treasurer, in interest bearing bonds, notes or other securities of the United States government. Likewise the board of county road commissioners may invest in the same manner money deposited to the credit of the county road fund.²⁸

Funds may also be invested in bonds of the Federal Home Owners Loan Corporation or of any federal home loan bank²⁹ but not in a federal savings and loan association.³⁰

The law on deposit of public money provides that all interest paid by banks on sums deposited by the treasurer in his official capacity is to be credited to the general fund of the county.³¹ Likewise, the Penal Code of the state provides that any interest on money deposited or loaned by a governmental unit belongs to the general fund of the governmental unit involved.³²

The Attorney General has ruled that interest on county road funds belongs to the general fund of the county.³³ Also, he has ruled that interest received from a bank on a deposit of tuberculosis building fund money must go into the general fund; however, if the building fund is invested in government bonds, the interest therefrom may be credited to the special fund.³⁴

Money Deposited for Cemetery Care

A person may deposit with a county treasurer the amount of \$50.00 or more, the interest on which is to be used for the care of cemetery lots.³⁵ Such money may be loaned at not less than 3 per cent, and the county has the first privilege of borrowing it. The liability of the county to pay interest is limited to interest actually collected on loans, plus interest on the amounts borrowed by the county.³⁶

Establishment of Funds

Various provisions of law assume that the county has a general fund, but there is no express authorization of such a fund. Likewise, several statutes indicate that special funds will be established for particular purposes. In addition, two statutes authorize the creation of a building sinking fund and a public improvement fund.

Building Sinking Fund

The board of supervisors of any county may submit to the electors the question of creating a sinking fund for the purchase of real estate for sites and the construction and repair of public buildings. If approved by a majority of the electors voting on the issue, the fund may be created by a tax levy not to exceed two mills on the assessed valuation for no more than ten years. The statute sets forth the referendum procedure. The fund is to be under the control of the board of sinking fund commissioners described in Chapter 15.³⁷

The Attorney General has ruled that money in the general fund cannot be transferred to such a building fund, even if approved by the electors.³⁸

Permanent Improvement Fund

The board of supervisors of any county (as well as the legislature or governing body of any other political subdivision of the state) has power to establish funds for the purpose of appropriating, providing for, setting aside, and accumulating money to be used for acquiring, constructing, extending, altering, repairing or equipping public improvements or public buildings which the county may be authorized to acquire, construct, extend, alter, enlarge, equip, or repair.³⁹

This authorization does not change the requirements for establishing a building sinking fund previously described.⁴⁰ The public improvement fund is a distinct fund. Moreover, money in it cannot be transferred to the general fund.⁴¹

Limitations on Transfers Between Funds

There appears to be no statutory provision on the authority of the board of supervisors to approve transfers between different funds of the county. However, the Attorney General has ruled that the board of supervisors has no authority to transfer amounts from the general fund to special funds and also that unused tax levies, not allocated to a sinking fund or otherwise earmarked, are to go to the general fund.⁴²

However, the board of supervisors may increase the appropriation to one county office, and decrease that to another, during the course of the fiscal year involved, provided the contractual obligations of the latter are not impaired.⁴³ For instance, it may increase appropriation for expenses of the board of county road commissioners.⁴⁴

Examination of Treasurer's Accounts

The state law expressly imposes upon the board of supervisors the duty of examining the accounts of the county treasurer, as often as once in each year. The board is to ascertain and enter upon its records a full statement of the accounts.⁴⁵ In this connection, the supreme court has stated that the powers of the county board must be exercised as a board and not as individuals, and that knowledge by individual members of an improper practice by the county treasurer could not be imparted to the board.⁴⁶

However, the accounts of a county officer need not be examined and audited by the board of supervisors if they have already been audited by the board of auditors.⁴⁷

Fiscal Year and Annual Reports

The legislature has provided that the fiscal year for accounting purposes for each county, county road commission, and all other county agencies is to be the calendar year ending December 31, except for counties having a population of 500,000 or more.⁴⁸

The legislature has also provided that all annual reports of the board of county road commissions and other county agencies, based in whole or in part on accounting completed with the fiscal year ended December 31, and required by law, are to be filed with the auditor general within 30 days after the April meeting of the board of supervisors.⁴⁹

Claims Against the County, Necessity of Audit

Section 9 of Article VIII of the Michigan Constitution provides, in part, that the board of supervisors, or in a county having a board

of auditors, such board is to adjust all claims against the respective counties. The section also provides that appeals may be taken from such decisions of the board of supervisors or the auditors to the circuit court in the manner prescribed by law. The Supreme Court has held that the county board cannot delegate the auditing of accounts to the county treasurer.⁵⁰

The legislature has enacted a statute dealing specifically with the adjustment and payment of claims against counties. This is in addition to statutes relating to the board of county auditors.

The statute on the payment of claims imposes a duty upon the board of supervisors, or the board of auditors, to adjust, allow, and authorize the payment of all claims against the county. The law further states that, except as otherwise provided, any claim not adjusted and ordered by either board is not to be paid. A claim, or portion of a claim, adjusted or allowed by the appropriate board is to be paid by the county treasurer.⁵¹

A claim may be allowed by majority vote of the supervisors present at a meeting. For this purpose, a majority of the members of the board is not necessary.⁵²

The Attorney General has ruled that when there is no board of county auditors, the board of supervisors must audit the expenses of the board of county road commissioners. The allowable expenses must not exceed the amounts appropriated. Expenses of the road commissioners are to be paid from the general fund of the county.⁵³

If a county establishes a board of auditors, no claim against the county may be paid by the treasurer until it has been duly audited and allowed by the board of county auditors. The relevant statutory provision expressly includes claims incurred by the county drain commissioner. Payment of an audited claim is to be made only upon a warrant duly signed by the chairman of the board and countersigned by the clerk, except salaries fixed by law or by the board of supervisors, and jury and witness fees, primary school money and such other funds, as are created and disbursed under special statutes. Penalties are provided for violations of this statutory provision.⁵⁴

Claims Against the County, Nature and Method of Audit

The State Supreme Court has declared that the board of supervisors is bound in all cases to act fairly and to give every claimant a full opportunity of presenting and establishing his case; further, the board is bound to give proper effect to all testimony presented to it, and finally, the board is bound to come to a decision on the merits of each claim, or distinctly record the rejection so that the claimant

may obtain a judicial decision.⁵⁵ However, on another occasion the court stated that the board is not obligated to investigate a claim if the claimant himself has not offered to produce proof in support of his claim.⁵⁶

The Supreme Court stated in an early case that the general policy of the Constitution is to leave with the board of supervisors the determination of all claims against the county, at least where the amounts are not fixed by law and are discretionary.⁵⁷ In another early case, the Court held that the board had exclusive jurisdiction over the allowance of a claim for reward offered by the county.⁵⁸

The State Supreme Court has considered several cases in which a claimant sought a *writ of mandamus* to compel the board of supervisors to pay a claim. The Court has held that *mandamus* lies in compelling the board to give a claimant a hearing and in deciding on the allowability of the claim,⁵⁹ but that it is for the board of supervisors to determine whether the claim is allowable.⁶⁰ In another instance, the Court denied a *writ of mandamus* sought by an attorney who had assisted a prosecutor. The board had allowed less than the county had collected for the claimant's services, but the court held the board had exclusive discretion in so far as the amount had not been fixed by statute. On the other hand, the court granted *mandamus* to compel the board to allow the claim of a physician for services during an epidemic, when he acted under the direction of the board of health and that board had certified that account to be correct.⁶¹

The Attorney General has ruled that claims against the county health department for purchase of equipment, salaries and other expenditures are subject to audit by the board of auditors, or if none, by the board of supervisors.⁶²

Claims Against the County, Appeal to Circuit Court

Section 9 of Article VIII of the Constitution provides that the decision of the board of supervisors, or the board of auditors, in respect to a claim, may be appealed to the circuit court.

The legislature has set forth the procedure by which a claimant may exercise the constitutional privilege of appealing the decision on a claim. The appeal is to be commenced by serving notice on the county clerk within 20 days after disallowance in whole or in part. However, no appeal is to be allowed unless the claimant appeared before the board of supervisors (or board of auditors) and presented evidence, or attached an affidavit in support of the claim. The claimant is to file a bond of \$200 for faithful prosecution of appeal and payment of costs. The clerk is to notify the prosecuting attorney of

the claim, and forward a brief return of the proceedings before the board of supervisors (or board of auditors). The clerk is to enter an action in the circuit court.⁶³

The claimant may not file a claim different from that presented to the board of supervisors (or board of auditors).⁶⁴

The statute sets forth several rules on the recovery of costs and other procedural matters. The circuit court may make a final determination or it may return the claim with an order of how to proceed. The prosecuting attorney is to defend the county but is not entitled to additional compensation for defending the county on the claim.⁶⁵

Notes to Chapter 16

1. MCL s. 47.1, MSA s. 5.551.
2. MCL ss. 47.2-4, MSA ss. 5.552-4.
3. *Brown v. Hill*, 1921, 216 M520, 185 NW 751.
4. MCL ss. 47.127, 47.130, 47.51-59, MSA ss. 5.591-2, 5.601-9.
5. MCL s. 47.5, MSA s. 5.555.
6. MCL s. 47.11, MSA s. 5.561.
7. MCL s. 47.13, MSA s. 5.563.
8. MCL s. 47.15, MSA s. 5.565.
9. MCL s. 47.6, MSA s. 5.556.
10. MCL s. 47.12, MSA s. 5.562.
11. MCL s. 47.6, MSA s. 5.556.
12. MCL s. 47.7, MSA s. 5.557.
13. MCL s. 47.9, MSA s. 5.559.
14. *Ibid.*
15. *MC Quaid v. Oakland County Board of County Auditors*, 1946, 315M 234, at 243, 23NW (2d) 644.
16. *Keho v. Board of Auditors of Bay County*, 1926, 235M 163, at 165, 209 NW 163.
17. MCL s. 129.11, MSA s. 3.751.
18. *Pokorny v. County of Wayne*, 1948, 322 M 10, at 15, 33 NW (2d) 641.
19. MCL ss. 129.12-13, 129.21-23, 129.31-40, 48.141-2, 129.61, 129.71, 129.81, 750.490, MSA ss. 3.752-3, 3.781-3, 5.531-40, 5.3271-2, 5.3281, 5.701, 3.841, 28.758.
20. MCL ss. 129.31-40, MSA ss. 5.531-40.
21. MCL s. 129.37, MSA s. 5.537.
22. MCL s. 129.31, MSA s. 5.531.
23. MCL s. 129.32, MSA s. 5.532.
24. MCL s. 129.33, MSA s. 5.533.
25. MCL s. 750.490, MSA s. 28.758.
26. MCL s. 48.141, MSA s. 5.3271.
27. *Op. Atty. Gen.* 1926-28, pp. 125-7. February 1, 1927.

28. MCL s. 129.71, MSA s. 5.701.
29. MCL s. 129.81, MSA s. 3.841.
30. Op. Atty. Gen. 1939-40, pp. 381-2. January 24, 1940.
31. MCL s. 129.34, MSA s. 5.534.
32. MCL s. 750.490, MSA s. 28.758.
33. Op. Atty. Gen. 1918, p. 72. August 2, 1917.
34. Op. Atty. Gen. 1947-48, p. 743. June 24, 1948, No. 806.
35. MCL s. 128.81, MSA s. 5.731.
36. Op. Atty. Gen. 1943-44, pp. 267-8. February 3, 1943, No. 0-72.
37. MCL ss. 141.51-55, MSA ss. 5.671-5.
38. Ops. Atty. Gen. 1956, pp. 605-7. October 15, 1956, No. 2771; 1957, pp. 148-152; April 5, 1957, No. 2831.
39. MCL s. 141.261, MSA s. 5.2770 (1).
40. Op. Atty. Gen. 1947-48, pp. 525-6. December 30, 1947, No. 650.
41. Op. Atty. Gen. 1943-44, p. 697. April 4, 1944, No. 0-2037.
42. Op. Atty. Gen. 1947-48, pp. 339-40; June 3, 1947, No. 415, 1947-48 pp. 369-71; August 6, 1947, No. 473.
43. Op. Atty. Gen. 1947-48, pp. 145-6. January 16, 1947, No. 0-5328.
44. Op. Atty. Gen. 1956, pp. 557-8. September 18, 1956, No. 2717.
45. MCL s. 46.6, MSA s. 5.326.
46. County of Saginaw v. Kent, 1920, 209 M 160, 176 NW 601.
47. MCL s. 47.9, MSA s. 5.559.
48. MCL s. 45.201, MSA s. 5.357.
49. *Ibid.*
50. Vincent v. Board of Supervisors, Mecosta County, 1883, 52 M 340, at 343.
51. MCL s. 46.71, MSA s. 5.521.
52. Hanna v. Chalker, 1904, 136 M 8, 98 NW 732.
53. Op. Atty. Gen. 1956, pp. 248-250. May 7, 1956, No. 2555.
54. MCL s. 47.8, MSA s. 5.558.
55. Mixer v. The Board of Supervisors of Manistee County, 1873, 26 M 422 at 426-7.
56. Hickey v. Supervisors of Oakland County, 1886, 26 M 94, at 100-1.
57. Videto v. Supervisors of Jackson County, 1875, 31 M 116.
58. Stamp v. Cass County, 1882, 47 M 330.
59. Peck v. Kent County, 1882, 47 M 477.
60. Videto Case, *Supra*.
61. McKillop v. Board of Supervisors of Cheyboygan County, 1898, 116 M 614.
62. Op. Atty. Gen. 1956, No. 2765.
63. MCL ss. 46.72-4, MSA s. 5.522-4.
64. MCL s. 46.74, MSA s. 5.524.
65. MCL ss. 46.75-7, MSA s. 5.525.

CHAPTER 17

Parliamentary Procedure for Board Members¹

General

For the orderly conduct of county board meetings, members should attempt to gain a basic knowledge of parliamentary procedure. The following outline, based largely on Roberts' *Rules of Order*, may be of help to board members not previously familiar with the conduct of meetings. The authors have drawn as well on Professor Albert Keiser's fine manual entitled *Parliamentary Law for Students*.²

Quorum

In order that an official meeting can be held, it is necessary that a quorum, that is, the established legal minimum, of the members be present. It is not necessary that each vote be by this quorum number of members. As long as enough members are present, it does not matter how many vote on the subject unless otherwise required by statute. Without the quorum, no official business can be conducted.

Recognition

After the meeting is called to order, the roll taken, minutes of the last meeting read, committee reports made, and old business cleared away, the meeting is ready to turn to new matters. When a member wishes to obtain the floor, he rises or holds up his hand, and says "Mr. (or Madam) Chairman," and waits for the chairman to recognize him by speaking his name, or indicating that he is to speak in some other way. When two persons ask for the floor simultaneously, the chairman has the option of recognizing the one he wishes. However, the chairman should be impartial, and should not attempt to use his position to overcome or "bulldoze" the opposition. The chairman should try to get all views into the discussion, and should try to recognize members who have not yet spoken, or who are particularly well-qualified to speak on the point. If the chairman of a committee which has dealt or will deal with the proposal asks to speak, he should be recognized first, as should the person who introduced the proposal or made the motion. Once the person has been recognized, the chairman should give him full opportunity to speak, should not cut him off, and should insist on order if other persons make a disturbance.

All persons who wish to speak should be recognized, unless they have repeated the same statement over and over, or for other good reason. Unjustified refusal to recognize may be appealed to the members present, one person moving that X be recognized, and another person seconding. The chairman must proceed to a vote immediately without further discussion or delay, and if he refuses to do so, he should be removed from his seat. Chairmen at board meetings have no privilege to be petty dictators. They are in their chairs to maintain order and assist in the presentation of all views to the members. Even a member voicing an unpopular view is privileged to speak for a reasonable time.

Motions

A member who wishes to put a matter before the board should rise or should state clearly and formally "I move that.....," which is the better form, or "I make a motion that....." Important resolutions or motions, and particularly proposed ordinances, should always be in writing, and should be handed to the chairman or the clerk. Upon receiving a motion, the chairman should read it if it is written, in a loud, clear voice, or if it is oral, he should repeat it loudly and clearly, so that all members may know what issue is to be discussed. The chairman should not permit aimless discussion not related to the matter on the floor at the present time, and should not hesitate to remind members that only the subject at hand should be discussed. Likewise, if there is no motion on the floor, there is no proper discussion, and the chairman should ask for a motion before permitting talk, unless a committee report, report from a board member, or the like, is before the meeting.

After the chairman has read the motion, it may not be withdrawn, though it may be seconded or amended. The mover is presumed to be in favor of his motion, and should have first chance to speak on it, and also to sum up just before the vote. If a member merely introduces a motion to which he is opposed for someone else, he may not speak at length on it, and neither may the seconder, though both may make a bare statement of their opinion on the matter. Often, a substantial citizen or other interested person will ask a member to introduce a motion to a certain effect. The member should not hesitate to do so where the idea is worthy of consideration, even though he himself may disagree or have no view on the subject.

Seconds

All ordinary motions must be seconded. Enough time must be given by the chairman but if no one rises to second, the motion is

dropped. In routine matters, or where no opposition is expected, the chairman may expedite matters by proceeding without waiting for a second. Often, the chairman may speed affairs by asking members for a second. Some motions need no second, among them nominations, questions of order, questions of privilege, calling up a motion to reconsider, asking permission to withdraw a previous motion, or requests for information. The seconder may withdraw his second any time up to the moment when the chairman has announced the motion just before taking the vote.

Debate

Debate follows on the duly-seconded motion. All persons should have the opportunity to state their ideas fully, but the chairman is under a duty to keep debate relevant, and to cut off long-winded speakers after they have stated their views. Certain motions and questions are not debatable, which means that the chairman must proceed immediately to a vote or a ruling. Among these are motions to adjourn to a fixed time when privileged, to adjourn, to take a recess when privileged, points of order, appeals relating to conduct of members, to suspend the rules, to divide a motion, to lay on table, to take from table, move the previous question or limit or extend debate, to amend an undebatable motion, to reconsider an undebatable motion, to close nominations. It is worth pointing out here that many responsible authorities in parliamentary law hold that there is no privilege on the part of chairman or members to vote a close of nominations. Chairmen should guard against possible objection by waiting an appreciable time after the last nomination, and by urging members to nominate several times before entertaining a motion to close nominations.

Voting; Cutting Off Debate

After full discussion, the chairman prepares for the vote by restating the motion, and asking the members, "Are you ready to vote?" or "Are you ready for the question?" Some member may indicate that he wishes to continue to speak, in which case the chairman should recognize him and delay the vote. After a debate of considerable length, a member may "move the previous question," which is a privileged motion. No debate on this motion is allowed, and if seconded, the board votes on this motion, which is simply a vote to proceed immediately to a vote on the main issue. If two-thirds of the members present vote to move the previous question, the chairman immediately states the main motion and takes a vote on it, cutting off all further discussion. The chairman must be wary of this moving of the previous question, since members of a pressure group or of

one political party may use it in an attempt to silence all opposition and to keep any indication of dissent out of the official record. Members may appeal a ruling of the chairman and a simple majority of the members present may change the ruling. Essentially, any democratic assembly depends on full and free debate, and no member should attempt to "steamroller" the opposition, both on principle, and because there is always tomorrow, when the sides may be changed.

If a two-thirds vote is not achieved, the debate continues. The vote should always be taken by having the members stand or by having them raise hands, since such vote is extraordinary. Even if the motion to move the previous question receives the required two-thirds vote, a motion to lay on the table is still possible. If a member so moves, no debate is possible, and the chairman must take the vote immediately after the second. If a majority present vote to lay on the table, the whole issue is put aside for that meeting. If taken back off the table by motion to take off the table, second, and favorable vote at a later meeting, the chairman must take the vote on the previous question immediately, since this motion is still pending. If this is the case, no debate is possible until the issue of moving the previous question is resolved.

Before calling for the vote on the main issue, the chairman should again state the proposition to be voted upon clearly so that no member may say later that he did not hear or understand the question. He should then call for the vote, which is generally either a voice vote, ayes and nays, or a vote by show of hands. On all ordinances and other matters of permanent record, the clerk must show in his records how each member voted, so a show of hands or a polling of the members is desirable. Naturally, after the vote is taken, the supervisor or temporary chairman should state clearly the final vote on the issue.

Motion to Send to Committee, to Recommit, and to Postpone

Only a few other motions are suited to the use of board members. The motion to send to committee, called often a motion to refer, or to commit, will come in for rather frequent use. Where a motion is made on the floor, the chairman may often refer it directly to the proper committee for consideration, and this is the usual way to handle most matters. Otherwise, where the motion is made, and the members present lack information and are merely "wallowing around," making no progress, it is well for a member to move that the matter be referred to committee for investigation and clarification of all points involved. In the committee reports of the following

meeting, the chairman of the committee is expected to report the matter back to the floor, with the required information, and the recommendation of the committee. If the committee has not been able to finish the job on the matter under investigation, the chairman should mention the fact that the issue is still being considered by his committee in his report.

In a similar fashion, if the issue is brought out of committee and subjected to discussion on the floor, and this discussion shows that further information is needed, a member may move to send back to committee or to recommit. A motion may also be made to postpone all consideration of the matter indefinitely, or to postpone it to a definite time, as for instance, the next meeting. The first motion is not likely to receive much use in a county board meeting, but the second serves the definite purpose of allowing members to think the issue over, talk informally among themselves and with their constituents or with experts, and so on. The chairman must see to it that the issue so postponed is raised at the proper time. Such postponed issues are generally taken up immediately after the end of committee reports, before the beginning of the consideration of new business.

Motion to Amend

Any member may move to alter, add to, or otherwise change a main motion in process of being discussed on the floor. The motion to amend must be seconded, and debate is allowed. If a majority of those voting on the issue approve of the amendment, the main motion is so changed, and debate then continues on the main issue as altered. Amendments may be made to other motions as well, as for instance to a motion to postpone to a certain time. Even if the main motion requires a two-thirds vote, an amendment never needs more than a simple majority to be approved. Any number of amendments may be made, and it is even possible to amend an amendment, but an amendment to an amendment may not be amended any further. Such amendment to an amendment is voted on first, then the amendment to the main motion. It is not possible to postpone motions for amendments or to lay them on the table, but it is possible to end debate on a proposed amendment by moving the previous question.

Motion to Make a Point of Order

If a member of the board thinks that the chairman is carrying on the business of the meeting in an improper fashion, he may move a point of order. This motion is privileged, and his question must be considered and answered immediately. Likewise, if the member

does not quite understand what is going on, or if he honestly wishes to ask a question about the procedure, he may move a point of order in the same way. It is wise for a county board to have a copy of Roberts' *Rules* on hand, and any other book on parliamentary law which may be helpful. If one of the members is particularly well-trained or skilled in parliamentary law, or if one of the citizens is willing to contribute his time and attend meetings, the board may consider him as its "parliamentarian," and refer all difficult questions to him for an answer. As a practical matter, however, the supervisor is usually more than able to keep things running smoothly at meetings.

Motion to Divide a Motion

Though there are many motions possible in parliamentary tactics, the motion to divide a motion is about the only other one for which a board member may find use. It occasionally happens that a member will introduce a motion, resolution, or proposed ordinance which contains two or more different ideas, one of which a member may be in favor of, and another or others which he may dislike. Usually, as a matter of courtesy, a motion will be divided at the request of a member, but if necessary, he may move for the division in a formal motion requiring a second. No debate is allowed, and members proceed to vote immediately on whether the split should be made.

Comment

As stated above, it will not serve the purposes of the county at all for a member of the board to attempt to confuse and mislead the meeting by devious parliamentary tactics. It is to the best interests of all that the business of the meeting should be carried forward in an orderly and business-like fashion. While the member should attempt to gain some knowledge of parliamentary procedure so that matters may be handled in a regular fashion, the best guide is consideration and common sense. Parliamentary trickery has no place in a county board meeting.

Notes to Chapter 17

1. This material was adapted from Chapter 13 of James and Marilyn Blawie, *The Michigan Township Board, Its Powers and Duties* (East Lansing, Michigan: Governmental Research Bureau [now Bureau of Social and Political Research], Michigan State University, 1957).
2. Albert Keiser, *Parliamentary Law for Students* (Ann Arbor, Michigan: Edwards Bros., 1941).

A TABLE OF MOTIONS WHICH MAY BE USED AT BOARD MEETINGS

<i>Main Motion</i>	<i>Debatable?</i>	<i>2nd Required?</i>	<i>Amendable?</i>	<i>Vote Required?</i>
To make a main motion	yes	yes	yes	maj.
<i>Privileged Motions</i>				
Question of privilege	yes	no	yes	maj.
To adjourn to time certain	no	yes	yes	maj.
To adjourn to an indefinite time	no	yes	no	maj.
To recess	no	yes	yes	maj.
<i>Incidental Motions</i>				
To appeal ruling of the chair	no	yes	no	maj.
Point of order	no	no	no	maj.
To object to consideration of a matter	no	no	no	$\frac{2}{3}$
To divide the motion	no	yes	yes	maj.
To withdraw the motion	no	no	no	maj.
To nominate	yes	no	no	maj.
To close nominations	no	yes	yes	$\frac{2}{3}$
<i>Subsidiary Motions</i>				
To lay on the table	no	yes	no	maj.
To take off the table	no	yes	no	maj.
To postpone to a time certain	yes	yes	yes	maj.
To postpone indefinitely	yes	yes	no	maj.
To refer to committee or to recommit	yes	yes	yes	maj.
To amend	yes	yes	yes	maj.
To amend an amendment	yes	yes	no	maj.
To move previous question (end debate)	no	yes	no	$\frac{2}{3}$
<i>Miscellaneous Motions</i>				
To reconsider a previous vote	no	yes	no	maj.
To limit or extend time of debate	no	yes	yes	$\frac{2}{3}$

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