

September 28, 1979

Ken VerBerg
Michigan State University
Governmental Division
E. Lansing, MI 48824

Dear Mr. VerBerg:

The Marquette County Board of Commissioners would appreciate your assistance in clarifying two issues brought before the Board by Henry Skewis, Marquette County Clerk. In a letter to the County Board Chairperson (copy attached) dated September 11, 1979, Mr. Skewis requested "that the operation of the Accounting Department, with the exception of the General Fund Ledger, be turned over" to him as "the duly elected County Clerk" of Marquette County. He said State statutes mandate that accounting procedures and operations are duties of the County Clerk, except for the General Fund Ledger.

In that same communication, Mr. Skewis stated there is no provision in the statutes allowing the "County Board to employ an Executive Secretary to be used as a Clerk" of any of the Board's sub-committees without his authorization.

On September 7, 1977 the Marquette County Board adopted an organizational structure which created an administrative division headed by the County Controller entitled Governmental Support Division, in which was placed the Accounting Department. The organization structure adopted by the County Board was developed by an Ad Hoc Government Study Committee. Also, currently, the County Board has an Executive Secretary who takes minutes at meetings of the various County Board committees and performs various other secretarial duties for the Board. Attached is a copy of the job description for that position.

Identical letter sent to Gil Wanger, Atty., MAC.

Ken VerBerg
September 28, 1979
Page 2

The County Board's Committee of the Whole will be discussing this topic on Wednesday, October 24, and the Marquette County Board would be grateful to you if you could possibly submit an opinion on the two issues brought up by Mr. Skewis prior to that date.

Attached are minutes and reports from the following meetings of the Government Study Committee, County Board and Committee of the Whole relevant to this issue.

Government Study Committee:

- Minutes of April 14, 1977 meeting.
- ⊙ Minutes of May 16, 1977 meeting.
- Minutes of June 6, 1977 meeting.
- Minutes of June 27, 1977 meeting.
- Minutes of July 25, 1977 meeting.

Committee of the Whole:

- Minutes of August 22, 1977 meeting.

County Board of Commissioners:

- Minutes of August 17, 1977.
- Minutes of September 7, 1977.

Thank you for your consideration of this request.

Sincerely,

Sally May

Sally May, Chairperson
On Behalf of the
Marquette County Board of Commissioners

klc

Attachments

COUNTY OF MARQUETTE
BOARD OF COMMISSIONERS

COURT HOUSE
MARQUETTE, MICHIGAN 49855

7r
Referred by Board

CLAYTON J. ANDERSON
RUBY CHEATHAM
ROBERT G. CLARK
RICHARD C. COOMBS
ELAINE JUIDICI
ORVO KROOK
FRANK J. LEONE
SALLY MAY
JOSEPH O. RACINE
CLYDE A. STEELE



JOHN P. FARRELL
Chairperson

TIMOTHY LOWE
Vice-Chairperson

April 11, 1980

Patricia Micklow
Assistant Prosecuting Attorney
Courthouse Annex
Marquette, Michigan

Dear Ms. Micklow:

Attached to this letter is a copy of an article by Henry Skewis which appeared in the March/April issue of the County Clerk. On page 17, middle column, first paragraph, Mr. Skewis stated "...I intend to take them to court, ask for a disqualification of local judges, and ask for permission to have an attorney, who I will hire, be paid by the County of Marquette".

I would appreciate a response from the Prosecuting Attorney's Office concerning the legal obligation of the county to pay attorney fees in cases such as mentioned by the County Clerk in the article.

Sincerely,

J. Patrick Farrell
Chairperson

JPF:klc

Attachment

Clerk VS Controller

The State Legislature in its devine wisdom created two statutes 46.4 and 46.13B which are at the very least in direct conflict with each other.

Both statutes deal in some manner with the responsibility of clerk and controller in the keeping of county accounting records.

Larger counties have set up separate accounting departments and hired chief accountants. Where the problem comes about is the determination as to who is responsible for the overall operation of the accounting department, or in the case of the smaller counties, who is responsible for the keeping of the accounting and records--the clerk or the controller.

Who Does What

In November, 1973, Betty Prout, County Clerk of Isabella County, started a circuit court case; Betty Prout, County Clerk vs The Isabella County Board of Commissioners et al.

File No. 5-125-H. Isabella County Circuit Court.

This case basically, was that the Isabella County Board of Commissioners had taken over some of the accounting records of the clerk and given them to an acting county controller. A stipulation and order was signed by Circuit Court Judge Robert B. Webster, and attorneys for both parties. It is my understanding that the records and duties in question were returned to the clerk, and that the Judge also ordered reasonable attorney fees paid on behalf of the clerk.

In February, 1979, a similiar case was filed in Gogebic County, by County Clerk Melvin Peterson. Case No. G-79-37-CZ. Melvin Peterson, Gogebic County Clerk vs The Gogebic County Board of Commissioners and the County controller. Again one of the issues was the eroding of the county clerks office, by taking accounting to the

County controller. In September, 1979, Circuit Judge Phillip J. Glennie, acting on special assignment, ruled that "The removal of the books, records and accounts of the Board of Commissioners from the Clerks Office is in violation of MSA-5.324-MCL-46.6; MSA-5.325-MCL-46.5 and MSA-5.329-MCL-46.9. The controller cannot replace

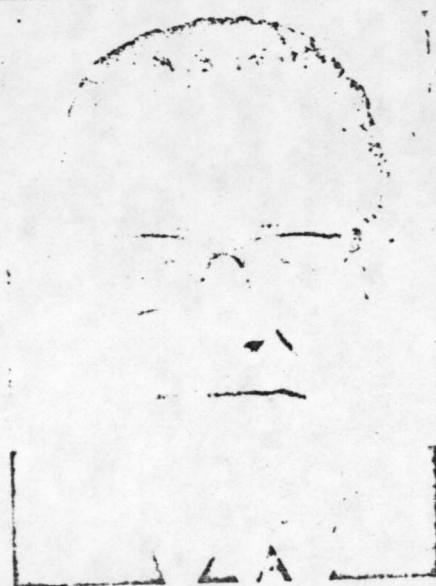
By HENRY A. 'HANK' SKEWIS
Marquette County Clerk

the county clerk, nor the clerk's duties and responsibilities." Judge Glennie also ruled that the county board had misused the controllers statute to illegally increase its own power, contrary to Statute MSA-5.331-MCL-46.11.

The records and accounts were returned to the Gogebic County Clerk and the Gogebic County Clerk took the case to the Court of Appeals. It is my understanding that it will not be heard until possibly January of 1981.

MCL-46.11 states that a county board shall not have the power to increase or extend its own powers, duties or jurisdictions.

Judge Glennie also stated that in



MCL-46.13... County Controller shall keep in his office a general ledger, nothing else, not the general ledger.

The Marquette County Board of Commissioners would seem to have begun an erosion of the office of county clerk. They allow all of the accounting records except the court trust fund, all of the payroll records, all of the claims and account ledgers and even the general ledger to be placed in an accounting department under the control of the county controller, and not the county clerk.

I, as County Clerk, have made a formal request that the accounting department and all of the records, except a general ledger be returned to me, the county clerk, or placed under my control. At this point their reply has been to refuse to do so, basing their answer on MCL-46.13B.

It is my understanding that if MCL-46.13B was intended to take these records from the clerks responsibilities under MCL-46.4-MCL-46.5-MCL-46.9, then these statutes would have been repealed to that extent.

Several counties have a controller who at this time do keep these records under their control, and I am sure some county clerks couldn't care less if they were relieved of the responsibilities, but we are all responsible to the people to do the job the laws dictate.

The controllers statute was intended by the legislature as a means for the county board to delegate administrative powers relating to matters of accounting. The role of the controller involves accounting functions, whereas the clerks duties are ministerial and involve data gathering, record maintenance and the recording of accounts and transactions of the county.

The controller takes information
Continued on Page 17

CLERK VERSUS CONTROLLER

provided by county officers and departments and interprets the accounts to provide management information to the county board. Therefore there is no inconsistency in the statutes as they apply to controller and county clerk.

Of course, county government has become more complex and accounting specialists are necessary. The controller, when appointed, becomes an administrative assistant to the county board. Financial responsibilities rest with the county board. Bookkeeping duties are functions of the county clerk's office.

The controllers statute allows for the controller to create a system of accounting, and that system is kept through a system of books by each officer and unit of government. If the controller finds the need of these records the statute provides for their inspection, but they are not in his direct possession.

Marquette County Board of Com-

missioners have set up a Government Service Unit with the controller as the official in charge. A part of this unit is the accounting department. I am meeting with the county board in one more attempt to get these records returned to me. In the event of a refusal, I intend to take them to court, ask for a disqualification of local judges, and ask for permission to have an attorney, who I will hire, be paid by the County of Marquette.

The counties that are aware of the cases mentioned, the County of Marquette and possibly some of the counties which have controllers now, have had legislation introduced that would give the controllers the very powers that I have referred to. These proposed pieces of legislation are:

- H.B. 5390 dealing with claims and accounts and designation of a Chief Fiscal Officer.
- S.B. 951-945-939-938-944 all deal with the erosion of some of the present duties of county clerks.
- S.B. 941 would allow the controller to make decisions in the sale of

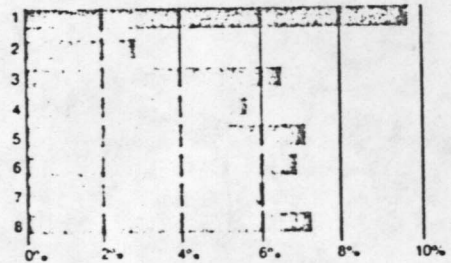
county owned lands. I'm sure that our organization, *The Michigan Association of County Clerks*, should be making their thoughts known to our legislators on these proposed bills. I'm sure that County Commissioners have made their thoughts known through MAC and that the Controllers group is doing some lobbying on these bills.

The Marquette County Board of Commissioners have written to Andrew DeKraker president of MAC, asking for an opinion on the statutes of clerk and controller. A reply was received, stating that these matters were being litigated at this time. The County Board has since sent another letter, insisting on an opinion, on the basis that Marquette County is not a part of the litigation.

I have done considerable research in the area of the county controller and its relationship to the County Clerk. Certainly additional material is desirable and any response pertinent to the issue is welcome. Mail it to Henry A. Skewis, County Clerk, Marquette, 49855.

Are you tired of explaining to your Pension Board why your investment advisor isn't doing the job?

If so, you should contact the professionals at National Bank and Trust Company of Ann Arbor. The chart below shows the result of NBT's Active Management Investment Philosophy. Other pension funds have seen its success... why not you? For more information, call Steve Hoffman at 313 995-8183.



Average Annual Compound Rates of Return for 5 Years Ended 12-31-79

- 1-NBT Fixed Income Fund 2-S&P AAA Bonds 3-US Treasury Bills
- 4-Solomon Bros. Bonds 5-Lehman Kuhn Loeb Bonds
- 6-LNL LT Corp. Bonds 7-LNL Govt. Agency Bonds
- 8-Banks Median for Pooled Fixed Income Funds

TRUST DIVISION

National Bank & Trust
Company of Ann Arbor Member FDIC

UNIVERSITY BINDERS

We Rebind and Laminate County Records "On your Premises".

We also have a complete line of Record Binders and Plat Cabinets.

If you need any of our services or products, just write:

UNIVERSITY BINDERS
P.O. Box 7064
The Woodlands, Texas 77380

Our Michigan representative will then call on you as soon as possible.



Karen

GARY L. WALKER

MARQUETTE COUNTY PROSECUTING ATTORNEY

72

Referred by Board
DAVID R. PETERSON
Chief Assistant

Branch Office:
200 Marquette
Negaunee, Michigan 49866
(906) 475-4114

Henry Skewis
County Building
Marquette, Michigan 49855
(906) 228-8500, Ext. 256

- PATRICIA L. MICKLOW
Assistant
- WILLIAM R. REKSHAN II
Assistant
- CAROLYN L. HANSON
Assistant
- DAVID M. SCHIEBER
Assistant
- HARLEY N. ANDREWS
Assistant
- THOMAS L. SOLKA
Assistant
- WAYNE N. JUSSILA
Special Investigator

PAO 80-14

COPY

April 14, 1980

Mr. J. Patrick Farrell, Chairperson
Board of Commissioners, Marquette County
County Courthouse Annex
Marquette, Michigan 49855

IN RE: LEGAL OBLIGATION OF COUNTY TO
INDEMNIFY ELECTED COUNTY OFFICIALS

Dear Commissioner Farrell:

In your April 11, 1980 letter, you requested a legal opinion concerning the obligation of the County to pay attorney fees in a case where a county elected official initiates a civil action against the County Board of Commissioners. This request was precipitated by an article written by Henry Skewis, Marquette County Clerk, which was published in the March-April, 1980 issue of the County Clerk. On page 17 of that article, Mr. Skewis stated in regard to his request to the County Board of Commissioners that the accounting department be turned over to him:

I am meeting with the County Board in one more attempt to get these records returned to me. In the event of a refusal, I intend to take them to Court, ask for a disqualification of local judges, and ask for permission to have an attorney, who I will hire, be paid by the County of Marquette.

Michigan law provides that the county board of commissioners employ an attorney to represent county officers in civil matters only when the county officer is the defendant in the action. MCLA 49.73 provides:

The board of commissioners of a county shall employ an attorney to represent elected county officers, including the sheriff, prosecuting attorney, clerk, treasurer, county surveyor, county executive, register of deeds, drain commissioner, mine inspector, public works commissioner and judges of the county district, probate and circuit courts in civil matters, as a defendant, when neither the prosecuting attorney or county corporation counsel is able to represent the particular officer. Legal advice, counsel, or court action shall be required under this section only in a case which involves an official act or duty of the office of the county officer. The attorney shall receive reasonable compensation as shall be determined by the board of commissioners.

Thus, it is mandatory that legal counsel be provided for elected county officers only when an elected officer is a defendant in a case which involves an official act or duty of his or her office.

However, it is possible for an elected county official or county employee who brings suit against the county board of commissioners to request as part of that action that attorney's fees be paid by the county involved. The decision as to whether or not attorney fees would be awarded to the plaintiff in such a case would rest with the Court.

I shall be present at your April 16 meeting should you have any further questions regarding this matter.

Very truly yours,

Patricia L. Micklow
Ass't. Prosecuting Attorney
PLM:vlp
cc: Henry Skewis, County Clerk
Duane Beard, County Controller