

chairman. In my opinion, it was not improper for the Clerk to act as temporary chairman for purposes of the organization meeting. His activity in this capacity must be regarded as legally effective in the absence of successful legal challenge by adjudication.

It follows that since he was able legally to assume the position of temporary chairman in the first instance, it was not improper for him to adjourn the meeting from time to time, pending termination of the deadlock in the proceedings by which the permanent chairman would be elected and seated.

The remaining facet of the third question lies in whether the Mayor pro-tem of the City of Gaastra acted to legal effect when he participated in the meeting of the County Board of Supervisors at which the tie was broken and a permanent chairman elected.

For reasons set forth supra at Question 2, his status as Mayor pro-tem appears to this office to have been properly established and the question whether he was qualified to attend the meeting of the County Board of Supervisors depends on whether the Mayor was "absent for any reason". Since he was so absent, the Mayor pro-tem was qualified to act as a supervisor, and his activity was legally effective.⁹

FRANK J. KELLEY,
Attorney General.

630211.2

TAXATION: Sales Tax.

SCHOOLS: School book defined as including year book.

Year books prepared by students and sold to students by schools or other educational institutions not operated for profit are exempt from the sales tax as school books, pursuant to Sec. 4a (c) of Act 167, P.A. 1933, as amended.

No. 4133

February 11, 1963.

Hon. Lynn M. Bartlett
Superintendent of Public Instruction
Lansing, Michigan

You have requested my opinion in answer to the following question:

"Are year books included within the exemption of school books under the Michigan Sales Tax Act?"

Act 167, P.A. 1933, as amended, being C.L.S. 1956, § 205.51 et seq.; M.S.A. 1960 Rev. Vol. § 7.521 et seq., provides for certain specific taxes, fees and charges to be paid to the state for the privilege of engaging in certain business activities.

Under Section 1 of the act persons subject to its terms include municipal or private corporations, whether organized for profit or not, as defined by the statute. The term "sale at retail" is defined by the section of the statute as any transaction by which is transferred for consideration the ownership

⁹ *Ryan v. Van Anden*, 116 Mich. 654. See also footnote 6, supra.

of tangible personal property, when such transfer is made in the ordinary course of the transferor's business and is made to the transferee for consumption or use, or for any other purpose than for resale, or for lease under certain circumstances.

Section 2 of the act imposes a tax of 4% upon all persons engaged in the business of making sales at retail.

Section 4a of the act provides, in pertinent part, as follows:

"No person subject to tax under this act need include in the amount of his gross proceeds used for the computation of the tax any sales of tangible personal property:

"(a) Not for resale, and when not operated for profit, to schools, * * * and other * * * educational * * * institutions * * * operated by an entity of government, a regularly organized church, religious or fraternal organization, a veterans' organization, or a corporation incorporated under the laws of the state of Michigan, when the income from the operation does not inure, in whole or in part, to the benefit of any individuals or private shareholders, directly or indirectly: Provided, That in all such cases, at the time of the transfer of the tangible personal property, the transferee shall sign a statement, in a form approved by the department of revenue, stating that such property is to be used or consumed in connection with the operation of such institution or agency and that the said institution or agency qualifies as an exempt entity under the provisions of this subsection. Such statement shall be accepted by all courts as prima facie evidence of the exemption and the said statement shall provide that in the event the claim for tax exemption shall be disallowed the transferee will reimburse the transferor for the amount of tax involved.

* * *

"(c) To bona fide enrolled students of school books * * * by schools or other educational institutions not operated for profit."

Purchases by schools or other educational institutions not operated for profit are exempt from the tax when the tangible personal property purchased is used for educational purposes, under Sec. 4a (a) of the act, provided the purchaser of the property shall sign a statement stating that such property is to be used and consumed in connection with the operation of such institution or agency and that such institution or agency qualified as an exempt entity under the provisions of the subsection.

For the purpose of this opinion we assume that the year books are purchased by schools or educational institutions, and such sales are exempt under subsection (a) of Section 4a, supra, having been printed and published at the request of the school or educational institution. In turn the school or educational institution then proceeds to sell the year book to bona fide enrolled students of the school.

In the construction of statutes it is axiomatic that the court will ascertain and give effect to the intention of the legislature. *Howard Pore, Inc. v. State Commissioner of Revenue*, 322 Mich. 49.

Lawmakers are presumed to know and legislate in harmony with existing laws. *People v. Harrison*, 194 Mich. 363.

At the time of enactment of Sec. 4a (c) of Act 167, P.A. 1933, supra, the School Code of 1927, being Act 319, P.A. 1927, particularly Sec. 1 of Chap. 31, Part 2 of the act, conferred express authority upon boards of education of school districts to purchase "textbooks." This authority appeared for the first time in Secs. 15 and 16 of Chap. 3, Act 164, P.A. 1881, an early codification of the school laws. Thus the concept and authority over textbooks have been retained in Michigan laws for many years. Present provisions of the school code of 1955 relating to textbooks are contained in Chap. 26, Part 2 of Act 269, P.A. 1955, being C.L.S. 1956, § 340.881 et seq.; M.S.A. 1959 Rev. Vol. § 15.3881 et seq. A textbook has been defined as a book for students containing the principles of a science or any branch of learning. *People v. Board of Education School District No. 5* (Ill.) 51 N.E. 633.

It is clear, therefore, that the legislature, in using the words "school book" in Sec. 4a (c) of Act 167, P.A. 1933, supra, was obviously employing the term in a broader sense than "textbook."

The word "school" has been held to be a generic one and generally means an institution for educational purposes or activities. *Bastendorf v. Arndt*, 290 Mich. 423.

In *Jasnowski v. Judge of Recorder's Court*, 192 Mich. 139, the Michigan Supreme Court defined the words "other publications" as used in a statute to include the word "books," being of the same class as newspapers and periodicals.

A book was defined by the United States Supreme Court in *Smith v. Hitchcock*, 226 U.S. 53, as generally a printed publication, with contents complete in themselves, dealing with one subject, suggesting no need of continuation and, perhaps, have an appreciable size. The court recognized that the word "book" may have different meanings according to the sense in which the word is used.

This office is informed that a year book is prepared by a group of students under the direction of a faculty member serving to give the students an experience in the process of preparing and editing written material, pictures, and other data to show the record of the students in a particular school. This is a creative work and represents a valuable educational endeavor on the part of Michigan school children. In some schools students enrolled in a journalism course or other similar courses as a regular part of the school curriculum are assigned the task of preparing and editing the school year book and receive school credits for successful completion of the course. The printed year book is the fruit of such experience.

There can be no question but that the year book prepared by and for school children under the direction of school authorities is a school book within the meaning of that term as contained in Sec. 4a (c) of Act 167, P.A. 1933, supra.

It is my opinion, therefore, that the sale of year books to bona fide enrolled students by schools or other educational institutions not operated for

profit is exempt from the sales tax under Section 4a (c) of Act 167, P.A. 1933, supra. Your question is answered in the affirmative.

FRANK J. KELLEY,
Attorney General.

630219.1

CITIES: Home Rule – Police Department.
CIVIL SERVICE: Police Department.
ORDINANCES: Special policemen.

Where a home rule city adopts the provisions of Act 78, P.A. 1935, by incorporation by reference in its charter, the provisions of the act become a part of the charter, and the city is without authority to adopt an ordinance providing for special policemen outside of the civil service system provided for in Act 78, P.A. 1935.

An ordinance that would grant full power of arrest and authority upon special policemen employed, paid and controlled by a private employer to enforce all laws in a particular area of a home rule city is against public policy and is illegal.

No. 4008

February 19, 1963.

Hon. Raymond L. Baker
State Representative
The Capitol
Lansing, Michigan

You have requested my opinion as to the legality of Ordinance No. 104, adopted by the City of Southfield.

Section 1 of the ordinance authorizes the police chief to appoint members of any regional shopping center police or internal security department as special police officers of the City of Southfield, with full powers of arrest and authority of regular City of Southfield police officers within such regional shopping center.

Special police officers appointed by the police chief of the City of Southfield are neither required under the terms of the ordinance to take an oath of office nor give a bond.

Under Section 3 of the ordinance the authority of the special police officers is restricted to the protection and maintenance of peace and order within the regional shopping center, and such special police are required to be employed and reimbursed by such regional shopping center exclusively. Section 3 also provides expressly that the special police officers shall not be entitled to any of the rights and privileges extended to regular or other members of the City of Southfield Department.

Section 4 of the ordinance requires the regional shopping center to deliver an indemnification and hold harmless agreement under which the center agrees to defend and hold harmless the city from any and all liability claims made against the city arising out of the actions of the special police officers appointed under the ordinance.