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**COMMUNITY COLLEGE DISTRICTS:** Issuance of bonds for school facilities.

**CONSTITUTIONAL LAW:** State loans to school districts.

**PUBLIC INSTRUCTION, SUPT. OF:** Qualification of bonds of school districts with community college departments.

**SCHOOL DISTRICTS:** Community college departments.

Pursuant to authority vested in him by Sec. 4 of Act 108, P.A. 1961, the superintendent of public instruction is authorized to qualify general obligation bonds sought to be issued by school districts for the purpose of constructing community college department facilities.

The superintendent of public instruction is without authority to qualify general obligation bonds sought to be issued by a community college district for the purpose of constructing community college facilities. A community college district is not a "school district" within the purview of Article X, Sec. 28 of the Michigan Constitution.

No. 4140

March 1, 1963.

Dr. Lynn M. Bartlett, Supt.  
Department of Public Instruction  
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You have requested my opinion in answer to the following questions:

1. Is the superintendent of public instruction authorized to qualify bonds proposed to be issued by school districts for the construction of community college department facilities under Act 108, P.A. 1961?
2. Is the superintendent of public instruction authorized to qualify bonds sought to be issued by community college districts formed pursuant to Act 188, P.A. 1955, as amended, for the construction of community college facilities pursuant to Act 108, P.A. 1961?

1. The board of education of certain school districts enumerated in Sec. 791 of the School Code of 1955, being Act 269, P.A. 1955, as amended, C.L.S. 1956, § 340.791; M.S.A. 1959 Rev. Vol. § 15.3791, is authorized upon approval of the superintendent of public instruction to establish a community college department of the school district school system.

The authority of the school district, upon majority vote of the registered school tax electors voting on the question, to borrow money and issue bonds for the purpose of constructing school buildings to house the community college department is set forth in Sec. 681 of the School Code of 1955, as last amended by Act 111, P.A. 1962, effective April 30, 1962. The amendatory Act 111, P.A. 1962, expressly recognized the qualification of bonds under Article X, Sec. 28.

On November 8, 1960, the people approved Article X, Sec. 28 of the Michigan Constitution, authorizing the state to borrow money for the purpose of making loans to school districts under certain circumstances, to assist them in paying principal and interest on general obligation bonds of school districts which have been qualified by the superintendent of public instruction as provided by law.

It should be observed that Article X, Sec. 28 expressly refers to school districts, in that the state is authorized to make loans to school districts and school districts are required to levy certain mills each year to qualify for such loans. The term "qualified bonds" is defined as general obligation bonds of school districts issued for capital expenditures. Finally, for our purposes, the Constitution provides as follows:

"Subject to the foregoing provisions, the legislature shall have the power to prescribe and/or limit the procedure, terms and conditions for the qualification of bonds, for obtaining and making state loans, and for the repayment of loans."

A plain reading of Article X, Sec. 28 of the Michigan Constitution is persuasive of the conclusion that the people in adopting this portion of the Constitution were not expressly limiting the purposes for which school districts could issue qualified general obligation bonds for capital expenditures.

Nor has the legislature, in the implementation of Article X, Sec. 28 of the Michigan Constitution, through the enactment of Act 108, P.A. 1961, being M.S.A. 1961 Cum. Supp. § 3.424 (111) et seq., restricted the qualification of bonds for certain capital expenditures only.

Section 4 of the act sets forth the requirements that must be met in order to secure the certificate of the superintendent of public instruction qualifying the general obligation bonds sought to be issued by school districts. Pertinent to our inquiry is subsection 5 of Section 4, which requires the superintendent of public instruction to find:

"That there exists a need for the project based upon current and probable future enrollment and that the project is designed to provide school facilities reasonably adequate to meet such need."

While the legislature has not seen fit to define the phrase "school facilities," the Montana Supreme Court in *State ex rel. Knight v. Cave*, 52 Pac. 200, has defined the term as facilities in addition to or beyond those already possessed by the district. In that case the court said:

"To provide, when reasonably necessary or convenient, more school rooms, is to furnish additional school facilities."

There can be no question but that a school district is providing for school facilities under Sec. 4 (5) of Act 108, P.A. 1961, supra, when it seeks to issue general obligation bonds upon approval of its registered school tax electors for the purpose of securing community college department facilities.

It follows, therefore, that under Article X, Sec. 28 of the Michigan Constitution and Act 108, P.A. 1961, supra, the superintendent of public instruction is authorized to qualify general obligation bonds that a school district seeks to issue for the purpose of constructing community college department facilities.

Therefore, it is my opinion that upon a finding by the superintendent of public instruction that there exists a need for the project based upon current and probable future enrollment, and that the project is designed to provide school facilities reasonably adequate to meet such needs and the other

requirements set forth in Sec. 4 of Act 108, P.A. 1961, the superintendent of public instruction is authorized by law to qualify general obligation bonds that a school district seeks to issue for the purpose of constructing community college department facilities.

2. While the attorney general has ruled that a community college district formed pursuant to the provisions of Act 188, P.A. 1955, and amendatory acts, being C.L.S. 1956 § 390.871 et seq.; M.S.A. 1959 Rev. Vol. and 1961 Cum. Supp. § 15.615 (11) et seq., is a "school district" within that term as it is used in Article X, Sec. 23 of the Michigan Constitution, for the purposes of sharing state school aid fund payments under the appropriate state school aid act with school districts maintaining community college departments, O.A.G. 1955-56, Vol. I, No. 2201, page 482, nevertheless a reading of Article X, Sec. 28 of the Michigan Constitution is persuasive of the conclusion that the people in enacting this portion of the Michigan Constitution did not consider community college districts to be "school districts" within the purview of Article X, Sec. 28.

Article X, Sec. 28 of the Constitution requires a minimum levy by a school district to exceed 13 mills on each dollar of assessed valuation or such lower millage as the legislature may prescribe in order to qualify the school district to borrow money from the state to assist it in the payment of principal and interest on its qualified general obligation bonds. In addition, the Constitution gives unlimited taxing power to the school district to meet not only the principal and interest on the general obligation bonds, but also to raise sufficient moneys to pay the state for any amount borrowed from the state.

Section 8 of Act 188, P.A. 1955, as amended, authorizes the board of trustees of a community college district to levy a tax of not more than 1 mill, subject to the provisions of the property tax limitation act that community college districts organized after April 15, 1957, shall be allotted a minimum tax rate of 1/1000 of 1 mill. In addition, the qualified electors of the community college district are authorized to increase the constitutional limitation upon taxes provided by Article X, Sec. 21 of the Constitution in an amount to be voted upon by the electors for any or all purposes for a period to not to exceed 20 years.

Under Act 108, P.A. 1961, supra, authorization is given to the superintendent of public instruction to qualify general obligation bonds sought to be issued by school districts if the bonds have a final maturity of not less than 25 years from the issuance date thereof.

Power to levy taxes is vested in the legislature, subject to limitations specified in the Constitution. *Shivel v. Kent County Treasurer*, 295 Mich. 10. The scope of the taxing power should not be extended by forced construction. Doubtful language is resolved in favor of the taxpayer. *J. B. Simpson, Inc. v. O'Hara*, 277 Mich. 55.

The conclusion is imperative that had the people intended to confer unlimited taxing power on a community college district for the payment of principal and interest of general obligation bonds, they would have expressly specified in Article X, Sec. 28 that community college districts were included in this grant of unlimited taxing power.

Therefore, it is my opinion that the superintendent of public instruction is without authority to qualify general obligation bonds sought to be issued by a community college district under Act 108, P.A. 1961.

FRANK J. KELLEY  
*Attorney General.*

630306.1

**COURTS: Probate Court, Juvenile Division:**

**Probate Court has no authority to operate institutional facility other than detention home.**

No. 4142

March 6, 1963.

Department of Social Welfare  
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Opinion has been requested on several questions relating to the operation of institutional facilities for children by the probate court. Each of these questions will be stated and answered in turn, for purposes of clarity and brevity.

1. Is there anything in existing law which authorizes the probate court to operate any institutional facility, other than a detention home as outlined in Chapter 712A, Sections 14 through 16, of the Compiled Laws of 1948?

Examples of such facilities would be a camp for delinquents, or a hospital program for disturbed children.

This question and the others dealt with in this opinion are addressed to the function of the probate court in connection with the juvenile division of such court under Chapter XIIA of the Probate Code, as now amended, being C.L. '48 § 712A.1 et seq.; M.S.A. 1962 Rev. 27.3178(598.1). While proceeding under this chapter, the probate court is termed the juvenile division of the probate court. Section 14 of the statute provides, with respect to a child taken into custody and not released, as follows:

“Any municipal police officer, sheriff or deputy sheriff, state police officer, county agent or probation officer of any court of record may, without the order of the court, immediately take into custody any child who is found violating any law or ordinance, or whose surroundings are such as to endanger his health, morals or welfare. Whenever any such officer or county agent takes a child coming within the provisions of this chapter into custody, he shall forthwith notify the parent or parents, guardian or custodian, if they can be found within the county. Unless the child requires immediate detention as hereinafter provided, the arresting officer shall accept the written promise of said parent or parents, guardian or custodian, to bring the child to the court at a time fixed therein. Thereupon such child shall be released to the custody of said parent or parents, guardian or custodian.