

in carrying out a disposition involving care by an agency or institution outside the court structure?

You clarify the meaning of the latter part of Question 4 by indicating that you have in mind the situation which arises when a child must be held by the court after commitment pending an available bed in the state institution to which the child has been committed.

There is nothing in Sections 14 to 16 of the statute dealing with the establishment and functioning of a detention home, or in Sections 18 et seq. dealing with disposition which contemplates that a child may be committed to an institution operated by the local court. The statute contemplates commitment to non-court institutions, and does not in my opinion authorize the commitment to a court-operated facility.

In the event that no public or private agency is immediately available to receive the committed child, practical necessity may compel the temporary use of the court operated facility but only for such minimum period as shall be necessary to place the child in a public or private facility.

FRANK J. KELLEY,
Attorney General.

630322.1

SCHOOLS: Teachers' Tenure — Reimbursement for expenses incurred by members of the Tenure Commission.

TENURE COMMISSION: Expenses — Reimbursement for expenses incurred by members of the Commission.

State funds may not be used to pay expenses of State Tenure Commission members while attending local school board and teachers' association meetings for purposes not related to the Commission's duty to hold hearings and review decisions of local controlling boards.

State funds may be used to reimburse State Tenure Commission members for all reasonable expenses necessary to the performance of their duties as a reviewing board.

No. 4114

March 22, 1963.

Mr. Gerald Tuchow, Chairman
State Tenure Commission
1314 Nicolet Place
Detroit 7, Michigan

You have asked for an opinion by this office on the following question:

Can state funds be used to pay the cost and expenses of members of the State Tenure Commission while attending meetings of various Michigan boards of education or teachers' associations for the purpose of explaining rules and regulations applicable to the Tenure Act and to encourage school districts to adopt the Teachers' Tenure Act?

The State Tenure Commission was created by Act 4, P.A. 1937, (Ex.

Sess.).¹ Section 8, Article VII of the act relates directly to the question you have raised. This section as it appears in the statute is as follows:

"The members of the state tenure commission shall receive 5 dollars per day while hearing cases and shall be reimbursed for necessary traveling and other expenses incurred in the performance of the duties of the commission. The expenses of the state tenure commission shall be paid by the state treasurer out of the general funds in the manner already provided by law for the payment of the accounts of boards and commissions."

This section limits compensation to five dollars a day and authorizes such payment only "while hearing cases."² With respect to expenses, reimbursement is authorized only for "necessary travel and other expenses incurred in the performance of the duties of the commission."

In view of the provisions of Section 8, it is desirable to determine the exact duties of the Commission. In making this determination, it is necessary to keep in mind that an administrative board, commission, or officer has no common-law powers and that their powers are limited to the statute creating them. The following excerpt from 42 Am. Jur., Section 26, p. 316, cited in *Coffman v. State Board of Examiners in Optometry*, 331 Mich. 582, at p. 590, is a clear explanation of the general rules applicable to the situation:

"Administrative boards, commissions, and officers have no common-law powers. Their powers are limited by the statutes creating them to those conferred expressly or by necessary or fair implication. *** In determining whether a board or commission has a certain power, the authority given should be liberally construed in light of the purposes for which it was created and that which is incidentally necessary to a full exposition of the legislative intent should be upheld as being germane to the law. *** Implication of necessary powers may be especially appropriate in the field of internal administration. However, powers should not be extended by implication beyond what may be necessary for their just and reasonable execution."

As pointed out in the above excerpt, the powers of a commission should be liberally construed in the light of the purpose for which it was created. At the same time, however, the act cannot be interpreted as granting powers beyond those reasonably necessary to the performance of those duties expressly imposed.

The purpose of the Teachers' Tenure Act as indicated by the Michigan Supreme Court in *Rehberg v. Board of Education of Melvindale*, 330 Mich. 541, is to help maintain an adequate and competent teaching staff in school districts subject to its provisions by securing teachers against arbitrary and capricious discharge or demotion. The Tenure Commission's area of responsibility under the statute is limited solely to reviewing the decision of the controlling board in those cases where the teacher appeals any decision

¹ C.L. 1948 §§ 38.71 through 38.172; M.S.A. 1959 Rev. §§ 15.1971 through 15.2054.

² O.A.G. No. 3614, issued to the State Tenure Commission, dated February 7, 1962, where "while hearing cases" was construed to include reading transcript and visitation of premises.

of the controlling board to the Commission. This power is expressly granted by Article VII, Section 9 of the act:³

"The state tenure commission shall act as a board of review for all cases appealed from the decision of a controlling board."

An examination of the entire act indicates no other duties are expressly imposed. Section 1, Article VI⁴ grants the teacher the right to appeal to the Commission and specific duties are imposed upon the Commission in relation to the procedure to be followed in holding the hearing. There are no other duties imposed which are not directly related to the review of cases appealed to the Commission.

It is clear, therefore, that the statute may be interpreted as granting powers necessary to the proper performance of the Commission's responsibility to hold hearings and review the decisions of local controlling boards, and under Section 8, Article VII, all reasonable and necessary expenses incurred by Commission members while going to and from Commission meetings and hearings and their expenses while attending such meetings or hearings may be properly paid by the state. In addition, all other expenses directly or indirectly related to the review of controlling board decision and which are necessary to the proper performance of this responsibility may lawfully be paid by the state.

To answer your specific question, it is necessary to decide whether there is an essential relationship between the duty of the Commission to hold hearings where decisions of local controlling boards are reviewed and the attendance by members of the Commission at meetings of local boards of education and teachers' associations.

The answer to the above question appears reasonably clear. As meritorious as it may be, the attendance by Commission members at school district meetings for the purpose of advocating the adoption of the Tenure Act or to encourage its retention cannot be said to be reasonably necessary to the performance of the Commission's duties as a reviewing board. Further there appears to be no basis for holding that it is reasonable and necessary for the Commission to explain its rules and regulations at such meetings in order to properly perform the duties imposed by the statute. With respect to this point, it should be noted that the Tenure Commission is a quasi judicial body and that it should carefully avoid being placed in a position of making unofficial comments on legal questions which later may be raised at appeals heard by the Commission. Appropriate here is the following excerpt from Opinion No. 2987, May 23, 1957, O.A.G. Vol. I, 1957, p. 265, 266:

"You [state tenure commission] have no authority * * * to render any advice or opinions to anyone other than by way of official decision on an appeal properly brought before you under the statutory procedures. Moreover, I should like to emphasize that * * *, any comment by [state tenure commission] * * * individually or as a group, purporting to render advice on any question relevant to the subject of the Tenure of Teachers' Act would be basically incompatible with

³ C.L. 1948 § 38.139; M.S.A. 1959 Rev. § 15.2039.

⁴ C.L. 1948 § 38.121; M.S.A. 1959 Rev. § 15.2021.

your duties under the statute and in violation thereof, for the statute requires that you decide questions only after proper notice, hearing, and the carrying out of other procedural safeguards set forth in the statute.

"Local school boards are by law given authority to retain their own attorneys, to advise them on all school matters."

For the reasons stated, it is the opinion of this office that while state funds can be used to pay the cost and expenses incidental to Tenure Commission members attending a state convention or visiting local school districts for the purpose of improving their understanding of the Commission's function as a review board,⁵ state funds cannot be used to pay cost and expenses while attending meetings of various Michigan boards of education or teachers' associations for the purpose of explaining rules and regulations applicable to the Tenure Act or to encourage school districts to adopt the Teachers' Tenure Act.

FRANK J. KELLEY,
Attorney General.

630302.2

BONDS: Transfer of bond proceeds into general fund for operating purposes.

SCHOOLS: Authority of school tax electors to vote to transfer bond proceeds.

Where a school district borrows money and issues bonds for the purpose of constructing and equipping elementary school buildings, a high school building, and purchasing school sites, bond proceeds must be used for those purposes only or be transferred to the debt retirement fund for payment of principal and interest on the aforesaid outstanding bonds. School tax electors are without authority to vote a transfer of bond proceeds to the general operating fund of the school district so long as the bonds are outstanding.

No. 4123

March 22, 1963.

Hon. Carl O. Little
State Representative
The Capitol
Lansing, Michigan

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

Can moneys in the building and site fund of a third class school district (which moneys were derived from the sale of bonds of the school district issued for the purpose of constructing and equipping elementary school buildings, a high school building, and purchasing school sites) be transferred by an approving vote of the tax electors of the school district, to the general operating fund of the district?

⁵ O.A.G. No. 3614, *supra*.