

**CONSTITUTIONAL LAW: Pledge of the credit of the state.**

Internal improvements.

**STATUTES: Industrial Development Bond Act – Proposed legislation.**

House Bill No. 346 introduced in the 72nd Legislature, Regular Session of 1963, which enables municipalities to construct, acquire or lease and sell factories, mills, shops and other industrial property is in accord with Article X, Secs. 12 and 14 of the Michigan Constitution of 1908 and the provisions of the revised Constitution voted upon by the people on April 1, 1963.

No. 4146

April 10, 1963.

Hon. Joseph J. Kowalski  
State Representative  
The Capitol  
Lansing, Michigan

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

Do the provisions of House Bill No. 346, as introduced, authorize the state and its municipal subdivisions to engage in activity prohibited either by the present Constitution of the State of Michigan or the proposed Constitution approved at the recent Constitutional Convention?

House Bill No. 346 is entitled as follows:

“A bill relating to industrial development, to authorize municipalities to acquire industrial buildings and sites; to provide for the financing of such buildings by the issuance of revenue bonds; to provide the terms and conditions of such bonds; and to prescribe the powers and duties of the municipal finance commission.”

If the bill is enacted into law as introduced, it would authorize counties, cities, incorporated villages, townships and port districts to construct, acquire, maintain and repair industrial buildings such as factories, mills, shops, processing plants and assembly plants. The cost of such project is to be financed by the proceeds received from the issuance of revenue bonds. The bonds are made payable solely from revenues derived from the industrial buildings so constructed. The maximum of 40 years is authorized for the payment of the bonds and the bill makes provision for refunding and the issuance of new bonds.

As proposed the bill would require that the private person leasing such industrial building facility be subject to taxation as though the lessee were the owner. At the same time the bill specifies that the taxes are not to become a lien on the property. As is customary with revenue bond statutes, the municipalities may issue such bonds without submitting the proposal to the electors unless not less than 10% of the electors of the municipality petition in writing for a referendum. Other provisions of the bill deal with the appointment of receivers and the duties of the Municipal Finance Commission.

At the outset it is clear that the Constitution of the State of Michigan, unlike the United States Constitution, is not a grant of power but rather

serves as a limitation upon the power of the legislature. This principle has been settled by the Michigan Supreme Court in *In re Brewster Street Housing Site*, 291 Mich. 313 (1939).

Two limitations upon the authority of the legislature are contained in the Michigan Constitution of 1908, as set forth in Secs. 12 and 14 of Article X, and provide as follows:

"Sec. 12. The credit of the state shall not be granted to, nor in aid of any person, association or corporation, public or private."

"Sec. 14. The state shall not be a party to, nor be interested in, any work of internal improvement, nor engage in carrying on any such work, except:

"1. In the development, improvement and control of or aiding in the development, improvement and control of public roads, harbors of refuge, waterways, airways, airports, landing fields and aeronautical facilities;

"2. In the development, improvement and control of or aiding in the development, improvement and control of rivers, streams, lakes and water levels, for purposes of drainage, public health, control of flood waters and soil erosion;

"3. In reforestation, protection and improvement of lands in the state of Michigan;

"4. In the expenditure of grants to the state of land or other property." (Emphasis supplied)

The law is well settled that Article X, Sec. 12 applies to political subdivisions and instrumentalities of the state. *Oakland County Drain Commissioner v. City of Royal Oak*, 306 Mich. 124 (1943).

In *Attorney General, ex rel. Eaves, v. State Bridge Commission*, 277 Mich. 373 (1936), the Michigan Supreme Court ruled that the issuance of revenue bonds to pay for the construction of a bridge did not violate Article X, Sec. 12 of the Michigan Constitution of 1908. The court reasoned that the revenue bonds did not impose a direct or indirect burden upon the taxpayers inasmuch as the bonds were not obligations of the state of Michigan and the credit of the state was not pledged in violation of Article X, Sec. 12. It must follow, therefore, that House Bill No. 346 does not violate the provisions of Article X, Sec. 12 of the Michigan Constitution of 1908.

It should be observed that the import of Article X, Sec. 12 of the Michigan Constitution of 1908 has been retained, in substance, as Article XI, Sec. 18 of the revised constitution voted upon by the people on April 1, 1963.

Therefore, it is my opinion that House Bill No. 346 does not violate Article X, Sec. 12 of the Michigan Constitution of 1908 or Article XI, Sec. 18 of the revised constitution voted upon by the people on April 1, 1963.

The phrase "work of internal improvement" as it is contained in Article X, Sec. 14 of the Michigan Constitution of 1908 is not a new phrase. A study of the Michigan constitutional history reveals that the language at issue has acquired a certain and distinct meaning as determined by the Michigan Supreme Court in decisions rendered by it. The language first

appeared in the Michigan Constitution of 1835 in Article XII, Sec. 3, where the people commanded that the legislature engage in "internal improvement \* \* \* in relation to *roads, canals and navigable waters.*" (Emphasis supplied)

Fifteen years later, in the Constitution of 1850, the people proscribed "works of internal improvement" by means of Article XIV, Sec. 9, which provided:

"The state shall not be a party to, nor interested in, any work or internal improvement, nor engaged in carrying on any such work, except in the improvement of or aiding in the improvement of the public wagon roads and in the expenditure of grants to the state of land or other property: Provided, however, That the legislature of the state, by appropriate legislation, may authorize the city of Grand Rapids to issue its bonds for the improvement of Grand river."

The reason for the bar on works of internal improvement in such a short span of time is recorded legal history. The legislature, pursuant to grant of authority contained in Article XII, Sec. 3 of the Constitution of 1835, authorized the governor to incur a debt in excess of five million dollars and embarked upon an ambitious program of constructing three railroads and two canals. The intervening financial panic forced the state to sell these projects, some of which were only partially completed, at a great sacrifice, leaving the state with a huge debt. It should be noted that one of the canal projects which commenced at the City of Mount Clemens to extend to the City of Kalamazoo was later abandoned as impractical and never completed. See this history ably reviewed in *Attorney General, ex rel. Barbour v. Pingree*, 120 Mich. 550 (1899).

The concept that works of internal improvement were undertakings of the government to construct artificial highways of commerce or to improve natural highways of commerce, works such as railroads, canals and similar works better left to private enterprise, became well fixed in the law. *Attorney General, ex rel. Brotherton v. Detroit Common Council*, 148 Mich. 71 (1907).

Thus the building of railroads, *People on relation of Bay City v. State Treasurer*, 23 Mich. 499 (1871), the improvement of navigation over the sand flats of a river, *Ryerson v. Utley*, 16 Mich. 269 (1868), the straightening of a channel in a river, *Anderson v. Hill*, 54 Mich. 477 (1884), and the deepening of a river channel, *Wilcox v. Paddock*, 65 Mich. 23 (1887) by the state or its political subdivisions, have been held by the Michigan Supreme Court to be works of internal improvement prohibited by the Constitution. However, the straightening or deepening of a channel or a stream for the protection of the public health was held not to be a work of internal improvement, *Brady v. Hayward*, 114 Mich. 326 (1897).

Undertakings in the performance of what is a duty owed by a government to its citizens, for example, like protecting their health and safety or suppressing crime, have never been considered and are not denominated works of internal improvement, *Attorney General, ex rel. Brotherton v. Common Council of City of Detroit*, supra.

Thus, the Michigan Supreme Court has held that sewage disposal systems

are not works of public improvement in *Oakland County Drain Commissioner v. City of Royal Oak*, supra; *City of Highland Park v. Oakland County Drain Commissioner*, 312 Mich. 407 (1945); *Young v. City of Ann Arbor*, 267 Mich. 241 (1934). Parks and harbors were held to be public improvements in *Gilbert v. City of Traverse City*, 267 Mich. 257 (1934).

An examination of precedents in other jurisdictions construing constitutional provisions relating to "works of internal improvement" is most helpful.

In *Melvin v. Board of County Commissioners of Anne Arundel County*, 86 A 2d 902 (Md. 1952), the Maryland Supreme Court ruled that the construction and operation of a general hospital with state funds was not a "work of internal improvement" within the Maryland Constitution.

The construction of college dormitories was held not to be a work of internal improvement barred by the Constitution, *State, ex rel. Thomson v. Giessel*, 72 N.W. 2d 577 (Wis. 1955); *State v. Board of Regents of State of Kansas*, 207 P (2) 373 (Kan. 1949). A state office building was held not to be a work of internal improvement. *State, ex rel. Thomson v. Giessel*, 65 N.W. 2d 529 (Wis. 1954).

A more recent case is the decision of the Virginia Supreme Court in *Harrison v. Day*, 107 S.E. 2d 585 (Va. 1959), concerning a Virginia statute that empowered the loan of public moneys to produce market authorities for the construction of produce markets as tested by a comparable Virginia constitutional provision prohibiting works of internal improvement. The Virginia Supreme Court ruled that the phrase "works of internal improvement" had reference to channels of trade and commerce and works of like quasi-public character, such as telephone and telegraph lines. The court held that the constitution did not bar the legislature from authorizing a loan of public funds to meet a "public need" as determined by the legislature.

A comparable constitutional provision was construed by the Minnesota Supreme Court in *Visina v. Freeman*, 89 N.W. 2d 635 (Minn. 1958) as not to prohibit the state from authorizing the formation of a port authority for the reclamation of land and construction of terminal port facilities. The court ruled that the constitutional provision did not apply to works of the state in the performance of governmental functions. The fact that some private interests might derive an incidental benefit from the activity did not deprive the activity of its public nature because it serves as a benefit to the community.

In *Commissioner of Internal Revenue v. Ten Eyck*, 76 F 2d 515 (1935), the court held that the development of a port and harbor has long been regarded as a governmental function when providing for the welfare of the people.

Based upon these authorities I must conclude that House Bill No. 346 as it relates to industrial development and the power of municipalities to acquire industrial buildings and sites, and to provide for the financing of such buildings by the issuance of revenue bonds is not barred by Article X, Sec. 14 of the Michigan Constitution of 1908 as engaging in works of internal improvements.

Finally, the law is equally well settled that Article X, Sec. 14 of the Michigan Constitution of 1908 does not prohibit self-liquidating projects,

*Gilbert v. City of Traverse City*, supra; *Attorney General ex rel. Eaves v. State Bridge Commission*, supra.

Article III, Sec. 6 of the revised Constitution voted upon by the people on April 1, 1963, provides as follows:

"The state shall not be a party to, nor be financially interested in, any work of internal improvement, nor engage in carrying on any such work, except for public internal improvements provided by law."

The legislature provides for the general welfare of the people when it authorizes the political subdivisions of the state of Michigan to acquire industrial buildings and sites through the borrowing of money and issuance of revenue bonds, thus encouraging work opportunities for its inhabitants without pledging the credit of the municipality or any of its taxpayers. Thus the bill would fulfill a clear public purpose.

Under the authorities that have been cited, I must conclude that House Bill No. 346 is in accord with the provisions of Article III, Sec. 6 of the aforesaid revised Constitution.

Therefore, it is my opinion that House Bill No. 346 is in accord with Article X, Secs. 12 and 14 of the Michigan Constitution of 1908 and with the revised Constitution voted upon by the people on April 1, 1963.

FRANK J. KELLEY,  
*Attorney General.*

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**CONSTITUTIONAL LAW:** Equal protection of the laws guaranteed by Article 2, Section 1 of the Michigan Constitution of 1908 and 14th Amendment to the Constitution of the United States.

**STATUTES:** Severability of portions of statutes found unconstitutional.

Act 12, P.A. 1963 as it amends the provisions of Act 280, P.A. 1939, as amended, denies equal protection of the laws to the people of the State of Michigan and is in violation of Article 2, Section 1 of the Constitution of the State of Michigan and the 14th Amendment to the Constitution of the United States.

The provisions of Act 12, P.A. 1963 are nonseverable and the unconstitutional portion of Section 56a demands that the whole act be declared unconstitutional. Manifest intent of the legislature is that Act 12, P.A. 1963 is nonseverable.

No. 4156

April 11, 1963.

Honorable Philip Rahoi  
State Senator  
The Capitol  
Lansing, Michigan

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

"Does Act 12, P.A. 1963 violate the provisions of the constitutions of the State of Michigan and of the United States?"