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.

630411.1

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?"

Act 12, P.A. 1963, amends the provision of Act 280, P.A. 1939, as amended, being C.L. 1948, §§ 400.1 et seq.; M.S.A. 1960 Rev. Vol. §§ 16.401 et seq., to add new sections 56a and 56b. Act 280, P.A. 1939 is known as the Social Welfare Act.

Section 56a provides as follows:

> "Effective only for the period ending June 30, 1967, the term 'dependent child' as used in section 56 of this act shall also include a needy child under the age of 18 who has been deprived of parental support or care by reason of the unemployment of a parent. *A parent is considered unemployed if he has been eligible to or has received unemployment compensation benefits from a state employment security commission subsequent to January 1, 1958,* is not engaged in gainful employment for more than 32 hours in any consecutive 2-week period and the cause of his current unemployment does not disqualify him for unemployment compensation benefits under Michigan law." (Emphasis supplied)

Section 56b requires cooperative arrangements between the employment security commission and the social welfare commission for maximum utilization of job placements and other services and facilities of the employment security commission and for the obtaining of other pertinent information. This section further authorizes an expenditure by the Department of Social Welfare of a sum not in excess of $225,000 for the administration and operation of the act for the period ending June 30, 1963.

Sections 56 and 56a pertain to that portion of the social welfare act which deals with dependent children.

The first sentence of section 56a quoted in full above is clear and unambiguous. By its enactment the legislature has enlarged the scope of the term "dependent child" as defined in section 56 of the social welfare act to add to the category of dependent children, children under the age of 18 who have been deprived of parental support or care by reason of the unemployment of a parent.

While the language of the second sentence of section 56a is not entirely clear I am persuaded that the legislature intended to define the "unemployment of a parent" as set forth in the first sentence. Thus, the legislature must have intended the second sentence as a statement of eligibility of the parent whose dependent child would be entitled to receive the benefits intended by Act 12, P.A. 1963. These conditions of eligibility may be divided into three parts:

1. A parent is considered unemployed if he has been eligible to receive unemployment compensation benefits from a state unemployment commission subsequent to January 1, 1958.
2. He is not engaged in gainful employment for more than 32 hours in any consecutive 2-week period.
3. The cause of his current unemployment does not disqualify him for unemployment compensation benefits under the Michigan law.

The role of the Attorney General in answer to the question propounded by you is solely to test Act 12, P.A. 1963 by the provisions of the constitu-

tion of the State of Michigan and the constitution of the United States. Thus I do not pass upon the terms of Act 12, P.A. 1963, relative to the authority of the Secretary of the Department of Health, Education and Welfare, to determine eligibility under the Social Security Act.

In making a review of the statute and coming to an opinion with respect to its constitutionality, I am not unmindful of those objectives of this act which are beneficial. It has been pointed out that if Act 12, P.A. 1963 is upheld as it is written some 10,000 families with dependent children of unemployed parents would be benefited. On the other hand approximately 20,000 such families would be deprived of benefits. These matters of deep concern, however pressing, cannot be determinative of the constitutionality of the act. My only guide must be the law.

Every statutory enactment must be in accordance with the Constitution of the State of Michigan and the Constitution of the United States.

Article 2 of section 1 of the Michigan Constitution of 1908 proclaims that government is instituted for the *equal benefit,* security and protection of the people.

The Fourteenth Amendment to the Constitution of the United States commands the State not to deny to any person within its jurisdiction the equal protection of the laws.

The Michigan Supreme Court has held that the Fourteenth Amendment to the Constitution of the United States and Article 2, section 1 of the Michigan Constitution of 1908, afford the same right of equal protection of the laws. *Naudzius v. Lahr,* 253 Mich. 216.

The law appears to be well-settled that statutes providing for public assistance to needy persons must meet the constitutional test of equal protection of the laws. *People ex rel. Heydenreich v. Lyons* (Ill. 1940), 30 N.E. 2d 46; *Wallberg v. Utah Public Welfare Commission* (Utah 1949), 203 P 2d 935; *In re Opinions of the Justices* (N.H. 1931), 154 A 217.

The equal protection clause of the Fourteenth Amendment, and it would follow the equal protection clause of the Michigan Constitution as well, does not take from the State the power to classify in the enactment of legislation under the police power. Thus the legislature has a wide scope of discretion in statutory enactments but it cannot act in an unreasonable and arbitrary manner. When the classification in a statute is called into question the statute will be sustained if any state of facts can reasonably be conceived to support it. *Lindsley v. Natural Carbonic Gas Co.,* 220 U.S. 61.

A statute does not violate the equal protection clause merely because it fails to be all embracing. However, the fundamental rule of classification is that the statute shall not be arbitrary and must be based upon substantial distinctions and be germane to the purpose of the law. *Kelley v. Judge of the Recorder's Court,* 239 Mich. 204.

Legislation which is limited by reasonable and justifiable differences to a distinct type of class of persons violates the equal protection clause if it does not apply equally to all persons in the same class because of unreasonable or arbitrary subclassification. *Haynes v. Lapeer Circuit Judge,* 201 Mich. 138.

Thus the legislature may determine a classification in a statute in accord

with the equal protection clause of the Constitution if the statute applies alike to all persons within the class and reasonable grounds exist for making a distinction between those who fall within such class and those who do not, with the distinction resting upon some ground of difference having a fair and substantial relation to the object of the legislature. *Godsol v. Unemployment Compensation Commission,* 302 Mich. 652.

The legislature may classify persons provided the classification is based upon substantial distinctions which are in accord with the legislative aims sought to be achieved by the statute. Classification must neither be arbitrary nor capricious and is required to rest on reasonable and justifiable foundations. Finally, classification is not offensive to the Constitution because it fails to provide for all persons who could be included so long as the legislature constitutionally makes a class of the group it selects. *People v. Chapman,* 301 Mich. 584.

Thus, for example, a statute that applied to all minors alike whether they were citizens of this State or subjects of a friendly or enemy government and applied equally to bar all aliens who desire to be appointed their guardians, was found to be in accord with the equal protection clause of the Constitution. *In re Phillips,* 305 Mich. 636.

A statute which provided that officers and men who were full-paid members of a city fire department should be entitled without any deduction of pay to a leave of absence of one day or 24 hours in every four days and a furlough of 20 days once each year was held to deny equal protection of the laws because it related only to a particular group of employees who receive full pay but gave no recognition to members of city fire department who were partly paid or were required to respond to alarms and rendered the same dangerous services as those in the full-paid class was held to be offensive to the Constitution in that it failed to protect all in the same class alike and discriminated between those in the same employment. *Simpson v. Paddock,* 195 Mich. 581.

Other numerous authorities could be cited but the foregoing are sufficient to set forth the ground rules under which the constitutionality of Act 12, P.A. 1963 is to be determined.

The title to Act 280, P.A. 1939, supra, as amended by Act 12, P.A. 1963, reads in part that it is an act to protect the welfare of the people of this State and to provide protection, welfare and assistance to dependent children. A comparable statutory enactment providing for assistance to dependent children was considered in *Crowley v. Bressler* (N.Y. 1943), 41 N.Y.S. 2d 441, and the court found the purpose of the act to be the protection of dependent children in a home atmosphere maintained by relatives. The following observations by the court are pertinent to your inquiry:

> "* * * The history of child welfare legislation shows it was enacted primarily for the purpose of retaining home conditions and home atmosphere for dependent children. The ideal sought was to keep and preserve the social, the spiritual and physical gains for children as obtained by them from their parents. The interest of the child has been ever paramount. The Social Welfare Law means something more than merely providing food, clothing and shelter for the dependent

child. Regard must be had for the mental, physical and moral welfare of the child.

"The spirit of such legislation is not only to limit the physical damage resulting from the death of the 'bread-winner', but to preserve the independence and morale of the child by keeping him in as nearly a normal family environment as possible. To remove and keep away the child from the haunting stigma of being an object of charity. * * *

"One of the aims of the humane social welfare laws, in part at least, is to prevent as far as possible the institutionalization of children; to provide for them the God-given right of having a place they could call home and the tender and sacred influences surrounding it, rather than the formalized regimentation in buildings, however beautiful and sanitary, called orphan asylums, retreats or houses of refuge."

To like effect is *Meredith v. Ray* (Ky. 1942), 168 S.W. 2d 437, where the court considered the purposes of an aid to dependent children statute in order to uphold the classification adopted by the legislature that the purpose of the legislation may have been to encourage and preserve the unity of the family in that the relatives named in the act are persons who naturally would feel some obligation to the child as the child would be treated as a member of the family. Thus the statutory classification to assist needy dependent children residing in the home of a relative was found to be in accord with the equal protection of the laws in that it operated equally on all within the same class.

Similarly in *Collins v. Board of Social Welfare,* 81 (Iowa 1957), 81 N.W. 2d 4, an amendment to a comparable aid to dependent children statute which would limit dependent children of a family living in a home together to a maximum amount but would allow each child to claim separate amounts which would total in excess of the maximum if the children lived separately from each other was found to be discriminatory and in violation of the Constitution. The court ruled that the classification, i.e., dependent children, based solely on the number of children in the home without any consideration as to the need, was completely unrelated to the purposes of the statute.

In *Dimke v. Finke* (Minn. 1940), 295 N.W. 75, a state statute providing old age assistance to certain persons and imposing a lien upon the property of those having or thereafter acquiring real property but not imposing a similar condition on others without real property was found to be in accord with the equal protection clause. The court held that the class was based upon substantial distinctions which made one class really different from another.

A requirement in a state old age assistance statute which conditioned old age assistance upon the execution of a lien signed by both the husband and the wife if they owned real property and were living together, although not applicable to a husband and wife failing to own real property, or being separated from each other, was upheld against the attack that it was violative of the equal protection of the laws in *Wallberg v. Utah Public Welfare Commission,* supra. The Court held that a classification is never unreasonable or arbitrary in its inclusion or exclusion features so long as

there is one basis for differentiations between classes or subject matters included as compared to those excluded from its operation, provided that the differentiations bear a reasonable relation to the purposes to be accomplished.

Thus, husband and wife living together in a home would be assisted with old age payments if they executed a lien. The ownership of property would not bar them from such assistance, thus putting them on an equal basis with those owning no real estate. Because a husband and wife who are living together would share the old age assistance payments as a family unit and signature of both parties would be readily obtained, the statute was reasonable in its classification. On the other hand, the husband and wife that were not living together would not be sharing old age assistance as a family unit and if they are separated the signature of the wife on the lien would not be readily obtainable. Based upon these differences the court concluded that there were substantial grounds for each distinction.

A state statute that could be construed to require the payment of old age assistance in full on a first-come, first-serve basis would violate the Constitution prohibiting discrimination. *Fairall v. Red* (Colo. 1941), 110 P. 2d 247.

From these authorities it is most clear that in social welfare legislation the legislature may attempt only a classification which rests upon a reasonable basis relating to an object of the legislation so long as there are substantial distinguishing characteristics.

A reading of the state social welfare act, supra, and the provisions of Act 12, P.A. 1963, is persuasive of the conclusion that these beneficial statutes were intended to provide for the assistance of dependent children in the home of their parents or relatives.

At the same time it is patent that the dependent child of the unemployed parent as well as the unemployed parent has absolutely no control over the fact that the employer or the former employer of the unemployed parent was or was not covered by employment security legislation.

In light of this purpose does the classification adopted by the legislature in § 56a of Act 12, P.A. 1963, provide equal protection of the laws guaranteed by both the state and the constitution.

The first condition of eligibility set forth in § 56a of Act 12, P.A. 1963, supra, is that the parent to be considered unemployed must have been eligible to receive or in fact has received unemployment compensation benefits from a state employment security commission (not limited to Michigan) subsequent to January 1, 1958. An unemployed parent with needy dependent children and drawing unemployment compensation benefits subsequent to January 1, 1958, being other wise eligible, would receive assistance under the act for the support of his dependent children. At the same time an unemployed parent with equally deserving dependent children but ineligible to draw unemployment compensation benefits after January 1, 1958, because his employer was not subject to the employment security act either for reasons of insufficient number of employees or by nature of his organization, would not be eligible to receive assistance for the support of his dependent children under the act. *Each parent is unem-*

ployed through no fault of his own, and has in his home needy dependent children. Yet Act 12, P.A. 1963, finds the dependent children in the home of an unemployed parent who drew unemployment compensation benefits after January 1, 1958, worthy of benefits under the act, and discriminates against the dependent children in the home of an unemployed parent who worked for an employer not subject to the employment security act as an unworthy of public assistance.

In this regard Act 1, P.A. 1936 (Extra Sess.), as amended, being C.L.S. 1956 § 421.1 et seq.; M.S.A. 1960 Rev. Vol. § 17.501 et seq., known as the Michigan Employment Security Act, pursuant to Sec. 41 thereof, applies to employers with 8 or more individuals in employment in each of 20 different weeks within a calendar year.

Further, Sec. 42 of the act excludes from the definition of "employment" agricultural workers, domestic workers, persons employed by charitable organizations and other listed employments.

Thus, Act 12, P.A. 1963 denies benefits to untold numbers of dependent children of unemployed parents who happened to work in agriculture, small enterprises, nonprofit organizations, domestic work or other excluded employment.

The conclusion is imperative that in order for the dependent children of the unemployed parent not eligible for unemployment compensation after January 1, 1958 to receive public assistance, they must leave their family home or the home of relatives. This is contrary to the spirit and the letter of the State social welfare act and amendments thereto. The distinction which the legislature has sought to achieve in Act 12, P.A. 1963, is therefore arbitrary and unreasonable in light of the worthy purposes of the social welfare act.

It must follow that the classification adopted in Act 12, P.A. 1963, in that a parent is considered unemployed only if he has been eligible to or has received unemployment compensation benefits from a state employment security commission subsequent to January 1, 1958, is patently arbitrary and unreasonable in light of the worthy purposes of the social welfare act and amendments thereto. This classification imposed by Act 12, P.A. 1963, does not fulfill the commands of the equal protection clause of Article II, Section 1, of the Michigan constitution of 1908, and the Fourteenth Amendment to the constitution of the United States.

The threefold definition of the unemployed parent adopted by the legislature in § 56a is not in the disjunctive and must stand or fall together.

My legal conclusion is supported by *Sacramento Orphanage and Children's Home v. Chambers,* 144 P 317 (Cal. 1914), where the court tested a California statute prohibiting state aid to certain needy minor orphans. The statute provided aid to needy minor orphans of citizens only. The court recognized that the purpose of the statute was to assist needy minor orphans and ruled that the distinguishing consideration or condition of the statute which sets him apart from other needy orphans must relate to him and not to his parents. The statute was found to violate the constitution in that it did not afford equality under the law.

The law is, of course, clear that the legislature may classify on the basis

of number of employees or the nature of the employment to determine the impact of employment security statutes or unemployment compensation acts upon employees, and such statutes have been upheld as constitutional. *Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 511. *Godsol v. Unemployment Compensation Commission*, 302 Mich. 652.

Thus, there can be no question that the Michigan Employment Security Act, supra, which covers employers with a statutory minimum number of employees and excludes certain other types of employers is based upon a reasonable classification which is germane to the purpose of the law. It should be observed that administrative convenience and expense in the collection or measurement of the tax for unemployment compensation has been found to be a sufficient justification for the difference between the treatment of some employers and not others. Similarly, the legislature is empowered to classify industries for the purposes of taxation provided that it acts upon all within the same class in the same manner.

The fact that a particular classification may be valid for purposes of one type of legislation does not make it equally valid for other purposes. In *Carter v. State Tax Commission*, 96 P 2d 727, the Court held that the reasonableness of classification must be tested by the purpose for which the legislation was designed so that a particular classification may be valid if the object of the statute is to raise revenue and invalid if the object is regulation.

It is untenable to contend that the purposes of Act 12, P.A. 1963, are to provide supplemental unemployment compensation benefits. Such supplemental compensation benefits have been provided by other pertinent statutes.

The purposes of the State Social Welfare Act and amendments thereto is to provide for the needs of dependent children in the home of the parents or relatives and are entirely foreign to the concept of supplemental unemployment compensation.

If a statute is susceptible to more than one construction — one consistent with constitutionality and the other inconsistent, the Court will consider the constitutional construction as the one presumptively intended by the legislature. *Motz v. City of Detroit*, 18 Mich. 495; *Sullivan v. Michigan State Board of Dentistry*, 268 Mich. 427. The suggestion that the second sentence of Section 56a of Act 12, P.A. 1963, is directory only and not intended by the legislature to express by way of definition the concept of "the unemployment of a parent" is to ignore the realities of this matter. I am convinced that the legislature intended to require an "unemployed parent" to be defined exactly as it is worded in the second sentence of Section 56a of Act 12, P.A. 1963. To indulge in the presumption that the legislature intended to enact the statute consistent with the constitutionality is to close one's eyes to the legislative history of Act 12, P.A. 1963.

I am aware of the fact that Senate Bill 1011 sought to achieve comparable purposes to Act 12, P.A. 1963 with Section 56a to be added to the State Social Welfare Act without the definition of the unemployed parent. This bill died in committee. House Bill 95 was consistent with Senate Bill 1011. This bill also died in committee.

The second sentence of Section 56a of Act 12, P.A. 1963, appeared as lines 7 through 16 of page 2 of House Bill 145. An effort was made

on third reading in the House of Representatives to eliminate this language through amendment and the amendment was not adopted. Journal of the House of Representatives, 72d Legislature, No. 31, p. 478. In the Senate, a substitute to Section 56a of Act 12, P.A. 1963, was offered by Senator Rahoi to omit the second sentence of this section and the amendment was not adopted. Journal of the Senate, 72d Legislature, No. 41, p. 445. I must conclude therefore that the legislature intended to define the "unemployed parent" under the act as set forth in the second sentence of Section 56a thereof and it is impossible for me to read the section in any other manner.

Act 119, P.A. 1945, added Section 5 to the Revised Statutes of 1846, Chapter I, being C.L. 1948 § 8.5; M.S.A. 1961 Rev. Vol. § 2.216, provides that in the construction of statutes any invalid portion will not affect the remaining portions of the statute and will be given effect unless such construction would be inconsistent with the manifest intent of the legislature and providing the remaining portions are not determined by a court to be inoperable.

There is ample precedent for the Attorney General as the chief legal officer of the State to render opinions declaring a portion of a statute to be unconstitutional and to hold that the remainder of the statute is not affected. For example, an opinion was rendered on October 24, 1944, as it related to the provisions of C.L. 1948 § 338.253; M.S.A. § 14.643, in its application to the licensing of optometrists. The Attorney General struck down a portion of the statute and declared the balance of the statute to be operable. The Attorney General's opinion was reviewed by the Michigan Supreme Court in *Coffman v. State Board of Examiners in Optometry*, 331 Mich. 582, and on page 588 of the opinion the Michigan Supreme Court said: "We are in accord with that opinion."

My predecessors have declared portions of statutes to be unconstitutional and upheld as valid the remainder of the statute. O.A.G. 1947-1948, p. 487, No. 617; O.A.G. 1951-1952, page 164, No. 1306.

I am fully cognizant that it is most desirable to afford ADC-U benefits to the maximum number of needy dependent children who have been deprived of parental support or care by reason of unemployment of a parent. To strike the second sentence of Section 56a of Act 12, P.A. 1963, as unconstitutional and to save the first sentence of 56a would broaden the effect of the act to include some 30,000 families with dependent children of unemployed parents. Nevertheless, the statutes of this State demand that acts of the legislature are to be severable only if this is consistent with the manifest intent of the legislature. The legislative history of Act 12, P.A. 1963, has been recited above. Its meaning is clear.

Reluctantly, I must conclude that the manifest intent of the legislature in adopting Act 12, P.A. 1963, was to restrict assistance to needy children under the age of 18 who have been deprived of parental support or care by the reason of unemployment of a parent if the parent was eligible for or had received unemployment compensation benefits from a State Employment Security Commission subsequent to January 1, 1958. Thus, I cannot say that it is clear that the legislature would have enacted Act 12, P.A. 1963, without the second sentence of Section 56a thereof. Mulhern v. Kent Circuit Judge, 111 Mich. 528; *Brown v. Judge of Superior Court,* 145 Mich. 413.

It is equally clear that the first and second sentences of Section 56a of Act 12, P.A. 1963, are inseparably blended and that the valid first sentence is dependent upon the invalid second sentence. *Brooks v. Hill,* 1 Mich. 118; *Quinlon v. Rogers,* 12 Mich 68. Therefore, it is impossible for me to sustain the lawful portions of Act 12, P.A. 1963. See *People v. McMurchey,* 249 Mich. 147.

The statutes of this State, Section 32 of Chapter 12, Revised Statutes of 1846, being C.L. 1948 § 14.32; M.S.A. 1961 Rev. Vol. § 3.185, empower me to render opinions to members of the legislature. I discharge my duty in rendering opinions on the constitutionality of statutes by following the law. Questions of sympathy or political considerations, as pressing as they may be, have no place in the opinion process of the Attorney General's office.

The people have entrusted the wisdom of legislation into the hands of their elected representatives. The legislature has spoken on ADC-U. I regret that no question was directed to my office either by the legislature before its passage or by the executive before its approval concerning the constitutionality of House Bill 145 despite the fact that both branches have submitted numerous legislative proposals of lesser legal import for analysis by my office. Had a timely request been directed to my office, perhaps the question of the unconstitutionality of the statute would not now be before me. I note that your request for this opinion was directed to my attention after the Senate had approved House Bill 145.

Under the law, I discharge my duty by measuring the provisions of Act 12, P.A. 1963, against the commands of Article II, Section 1, of the Michigan Constitution of 1908 and the Fourteenth Amendment to the Constitution of the United States in light of the precedents of the highest appellate courts. So measured, Act 12, P.A. 1963, is wanting in constitutional validity. The manifest intent of the legislature is clear. The whole act must stand or fall.

I am satisfied that I have explored every avenue of approach within the law in an attempt to uphold its constitutionality before coming to the irrefutable conclusion that it is beyond rescue.

Therefore, I am constrained to state that it is my opinion that Act 12, P.A. 1963, is unconstitutional in that it denies equal protection of the laws to the people of the State of Michigan contrary to Article II, Section 1, of the Michigan Constitution of 1908 and the Fourteenth Amendment to the Constitution of the United States.

FRANK J. KELLEY,
Attorney General.