subject to judicial construction in the sense in which they have been interpreted by the court. *People v. Powell,* 280 Mich. 699 (1937).

It must follow that the legislature, through amendment of Sec. 1 of Act 202, P.A. 1903 by Act 103, P.A. 1941, in empowering the state board of education to certificate teachers in the public schools, was not including therein superintendents of schools, principals or other school administrators.

My construction of the statute is supported by the decision in *Ortega v. Otero,* 154 Pac. 2d 252 (N. Mex. 1944), which defined a teacher as one who is employed for instructional purposes.

To the same effect is *State ex rel. Howard v. Ireland,* 138 Pac. 2d 569 (Mont. 1943), where the Montana Supreme Court ruled that a superintendent of schools was not a teacher within the statute empowering a board of education to employ or discharge teachers, the court holding that the superintendent of schools occupies a different position and performs different functions than that of a teacher.

A rule empowering a teacher to exercise the right of moderate restraint over a pupil was held by the court in *Prendergast v. Masterson,* 196 S.W. 246 (Tex. 1917), not to include a superintendent of schools. The court ruled that a teacher is one who teaches.

Construing the provisions of Act 202, P.A. 1903, as amended, together with the pertinent provisions of Act 319, P.A. 1927, prior to its repeal, and Act 269, P.A. 1955, as amended, in effect presently, the legal conclusion is inescapable that the state board of education is authorized by law to certificate teachers in the public schools of the state only, that is, those persons who instruct children in the public schools in the state of Michigan.

Therefore, it is my opinion that the State Board of Education is without authority to certificate administrators in the public schools under the provisions of Act 202, P.A. 1903.

FRANK J. KELLEY,
Attorney General.

630814.1

ELECTIONS: Circuit judges — effect of 1963 Constitution.
JUDGES: Circuit, election of under 1963 Constitution.

In order to comply with the various provisions of the Revised Constitution, the first regular election of circuit judges thereunder may not be held prior to the November, 1966, general election.

No. 4175 August 14, 1963.

Honorable Miles N. Culehan
Chairman, Legislative Committee
Wayne Circuit Judges
1601 City-County Building
Detroit 26, Michigan

You have requested my advice as to the general election at which the circuit judges of this state will be elected next following the effective date

of the Constitution of 1963. Circuit judges were last elected at the biennial spring election in April, 1959, for a term which is presently fixed to expire on December 31, 1965. The present statute[1] provides for the election of their successors at the biennial spring election in 1965 for a six year term commencing on January 1, 1966.[2] Such statutory provisions were enacted pursuant to Article VII, Section 9, of the 1908 Constitution reading:

> "Circuit judges shall be elected on the first Monday in April, 1911, and every sixth year thereafter. They shall hold office for a term of 6 years and until their successors are elected and qualified. They shall be ineligible to any other than a judicial office during the term for which they are elected and for 1 year thereafter."

The question presented arises by reason of various provisions of the 1963 Constitution cited by you. Among these is Article II, Section 5, which provides:

> "Except for special elections to fill vacancies, or as otherwise provided in this constitution, all elections for national, state, county and township offices shall be held on the first Tuesday after the first Monday in November in each even-numbered year or on such other date as members of the congress of the United States are regularly elected."

Inasmuch as all such officers will now be elected at an election held in November of the even-numbered years, there will henceforth be no biennial spring elections held in the odd-numbered years, including 1965. Instead, aside from special elections to fill vacancies, it will be necessary hereafter to elect circuit judges at the election held in November of an even-numbered year. Article XI, Section 2, specifies:

> "The terms of office of elective state officers, members of the legislature and justices and judges of courts of record shall begin at twelve o'clock noon on the first day of January next succeeding their election, except as otherwise provided in this constitution. * * *"

There being no special provision fixing the date of commencement of the terms of circuit judges, the effect of the latter provision is to require that the term of office of those elected shall commence at noon on the first day of January next succeeding their election in November. Article VI, Section 12, provides:

> "Circuit judges shall be nominated and elected at non-partisan elections in the circuit in which they reside, and shall hold office for a term of six years and until their successors are elected and qualified. In circuits having more than one circuit judge their terms of office shall be arranged by law to provide that not all terms will expire at the same time."

Section 8 of the Schedule and Temporary Provisions provides further with respect to their first election:

> "The provisions of Article VI providing that terms of judicial offices shall not all expire at the same time, shall be implemented by law

[1] C.L.S. 1961 § 168.416, M.S.A. 1956 Rev. Vol. § 6.1416.

[2] C.L.S. 1961 § 168.419, M.S.A. 1956 Rev. Vol. § 6.1419.

providing that at the next election for such offices judges shall be elected for terms of varying length, none of which shall be shorter than the regular term provided for the office."

You have also cited Section 3 of the Schedule and Temporary Provisions, which specifies:

> "Except as otherwise provided in this constitution, all officers filling any office by election or appointment shall continue to exercise their powers and duties until their offices shall have been abolished or their successors selected and qualified in accordance with this constitution or the laws enacted pursuant thereto.
>
> "No provision of this constitution, or of law or of executive order authorized by this constitution shall shorten the term of any person elected to state office at a statewide election on or prior to the date on which this constitution is submitted to a vote. * * *"

Were the officers elected at the election to be held in November, 1964, their term of office would as provided in Article XI, Section 2, commence at noon on January 1, 1965. However, that would have the effect of shortening by one year less one-half day their present term, which was fixed at six years by the 1908 Constitution[3] and implementing statute[4] and remains unchanged by virtue of identical provision of the Revised Constitution.[5] The 1963 Constitution is devoid of any language evidencing an intention to either require or authorize such a result. Instead, shortening of their term is prohibited by Section 3 of the Schedule and Temporary provisions, supra. Therefore, the legislature is without authority to provide, in its legislation implementing the new Constitution, for the election of circuit judges at the general November election to be held in 1964. Instead, in order to avoid shortening of the term the first regular election of circuit judges following the effective date of the new Constitution may not be held until the November, 1966, general election. Implementing legislation should so provide.

Circuit judges hold office under the Revised Constitution[6] "for a term of six years and until their successors are elected and qualified." No legislation is required to authorize circuit judges who on December 31, 1965 are the incumbents to hold office until the commencement of the term of their elected successors at noon on the 1st day of January, 1967.[7] Presumably implementing legislation will include appropriate amendments to the judges' retirement act[8] to recognize such status.

The Revised Constitution[9] includes a mandate to the legislature to adopt legislation implementing the requirement that the judges in multi-judge circuits be elected at the first election of circuit judges held under the

[3] Article VII, Section 9, above quoted.

[4] Footnote No. 2.

[5] Article VI, Section 12, above quoted.

[6] Article VI, Section 12, above quoted.

[7] Article XI, Section 2. *Baxter vs. Latimer,* 116 Mich. 356, 364; *First National Bank of Paw Paw vs. Moon,* 243 Mich. 124, 127; *Attorney General ex rel. McKenzie vs. Warner,* 299 Mich. 172, 191-192.

[8] Act No. 198, P.A. 1951, being C.L.S. 1961 § 38.801 et seq. Certain sections have since been amended or added. M.S.A. 1962 Rev. Vol. § 27.125(1) et seq.

[9] Section 8 of the Schedule and Temporary Provisions, supra.

Revised Constitution for terms of varying length, provided that in fixing such terms of varying length none shall be shorter than the regular term provided for the office, i.e., six years.[10]

FRANK J. KELLEY,
Attorney General.

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6 30814.2

COUNTIES: District Health Department.
HEALTH, DEPT. OF: District — Withdrawal of county from district health department.

A county cannot withdraw from a district health department based solely on the action of that county's board of supervisors' resolution to withdraw.

No. 4179 August 14, 1963.

Mr. Farrell E. Elliott
Prosecuting Attorney
Chippewa County Court House
Sault Ste. Marie, Michigan

You have requested an opinion of the Attorney General on the following question:

> May one county withdraw from a district health department solely on the action of that county's board of supervisors' resolution to withdraw?

The district health department is established under the authority of Act 306, P.A. 1927, as amended.[1]

The question of dissolution of a district health department was answered by this office in its Opinion No. 984, dated June 28, 1949, O.A.G. 1949-50, p. 263, wherein it was stated:

> "1. Since under the statute the district board of health in a multi-county health unit possesses the same powers over the district health department as are vested in the board of supervisors in a single health department, it is our opinion that the district health department may be discontinued by action of the district board of health."

In said opinion it was further stated:

> "2. The statute provides no authority for one county to withdraw from a district health unit. If the desired result is to maintain a district health department which would not include the one county in question, this might be accomplished through the disbandment of the present district health department and the subsequent reorganization of a new health department comprised of the remaining counties."

I am in accord with the conclusions expressed in Opinion No. 984. It follows that action to disband a district health department or to permit the

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[10] Article VI, Section 12.

[1] As amended by Act 187, P.A. 1954, C.L.S. 1956 § 327.201-327.208a; M.S.A. 1956 Rev. Vol. § 14.161-14.169.