

government, or the state or any of its subdivisions who collectively hold the record legal title to more than ½ of the area of the land in the territory to be annexed is filed with the city council of said city and with the township board of the township in which such territory is situated, such annexation may be accomplished by the affirmative majority vote of the city council of such city and the approval of the township board of such township: * * *."

Thus, the secretary was signing on behalf of the school district as an owner of the territory sought to be annexed.

The statute above noted does not authorize the secretary of a fourth class school district to execute a petition for annexation on behalf of the school district without authorization from the governing body of the district. A school district acts through its board of education.⁸ Therefore, it is my opinion that the secretary of a fourth class school district does not have authority to sign an annexation petition on behalf of the school district unless such authority has been conferred by official resolution of the board of the district.

FRANK J. KELLEY,
Attorney General.

631118.5

ADMINISTRATIVE BOARD: Transfer of jurisdiction.
CONSERVATION, DEPT. OF: Transfer of jurisdiction.
MENTAL HEALTH, DEPT. OF: Transfer of jurisdiction.

Transfer of jurisdiction of state owned lands from department of mental health to the department of conservation cannot be effected by a recordable instrument. However, recording requirement is severable and transfer may be accomplished by appropriate action by director of department of mental health, the department of conservation, and the state administrative board.

No. 4221

November 18, 1963.

Mr. Charles F. Wagg, Director
Department of Mental Health
Cass Building
Lansing, Michigan

Your letter requesting the preparation of a recordable instrument transferring the jurisdiction of certain lands described in Act 26 of the Public Acts of 1963 from the department of mental health to the department of conservation has been received. Act 26 states:

"Sec. 1. The department of mental health, with the approval of the department of administration and the state administrative board, is hereby authorized to transfer to the jurisdiction of the department of conservation the following described lands located in Tuscola county, state of Michigan:

⁸ See *Tavener v. Elk Rapids Rural Agricultural School District*, 341 Mich. 244; *McLaughlin v. Board of Education of Fordson School District*, 255 Mich. 667; *Mathews v. Kalamazoo Board of Education*, 127 Mich. 530.

PARCEL 1

"That part of the northeast $\frac{1}{4}$ of the southeast $\frac{1}{4}$ of section 17, town 12 north, range 9 east, lying southeast of Cass river.

PARCEL 2

"That part of the southwest $\frac{1}{4}$ of the southeast $\frac{1}{4}$ of section 17, town 12 north, range 9 east, lying southeast of the Cass river.

"Sec. 2. The transfer of jurisdiction of the lands described in section 1 hereof shall be made by a recordable instrument prepared by the attorney general which shall provide that upon termination of use or need of the transferred lands by the department of conservation, jurisdiction of said lands shall revert to the department of mental health."

Research has not disclosed any type of legal instrument that would be entitled to recording which would transfer jurisdiction of the state-owned lands in question to the department of conservation as authorized by Act 26. In this connection, I point out that a deed is not an appropriate document to effect this transfer because a deed requires both a grantor and a grantee. At common law a person cannot deed to himself.¹ The land in question is presently owned by the state and would still be owned by the state after the contemplated transfer of jurisdiction. Thus, such transfer could not be effected by a deed.

Consideration has been given to the possible use of an affidavit to fulfill your request for a recordable instrument. However, Attorney General Opinion No. 1944² held that only such affidavits as are expressly authorized by statute to be recorded may be recorded. Research has not disclosed any statute authorizing the recording of the type of affidavit that could be given in the situation in question.

Although it is not possible for me to comply with your request for preparation of a recordable instrument as provided for in Act 26, I do not think that this would prevent the transfer of jurisdiction authorized by Act 26. Section 5 of Chapter 1 of the Revised Statutes of 1846, as amended,³ provides:

"In the construction of the statutes of this state the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature, that is to say:

"If any portion of an act or the application thereof to any person or circumstances shall be found to be invalid by a court, such invalidity shall not affect the remaining portions or applications of the act which can be given effect without the invalid portion or application, provided such remaining portions are not determined by the court to be inoperable, and to this end acts are declared to be severable."

Applying the rule of construction expressed in section 5 to Act 26, it is my opinion that the impossibility of complying with the requirement for a recordable instrument does not make the remainder of the act inoperable.

¹ *Strout, Admr., v. Burgess*, 68 A 2d 241 (144 Me. 263) 1949.

² O.A.G. 1955-56, Vol. I, p. 462.

³ C.L. 1948 § 8.5; M.S.A. 1961 Rev. Vol. § 2.216.

The legislature intended to authorize the transfer of jurisdiction. It is not legally possible to transfer the jurisdiction in the way specified. However, the remainder of the act is not dependent on the recording of an instrument. Therefore, the proper construction is that the requirement of a recordable instrument is severable.

The director of mental health, who is appointed pursuant to section 3 of Act 271, Public Acts of 1945, as last amended by Act 236, Public Acts of 1963,⁴ can initiate the transfer by a letter addressed to the department of conservation in which he offers to make the transfer. Written acceptance of the land in question should be made by the conservation commission on behalf of the department of conservation. That letter should be sent to the controller for his approval and signature as chief executive of the department of administration. The controller, who is also the secretary of the state administrative board, should be requested to have the transfer placed on the administrative board agenda for consideration and approval. If the administrative board approves the transfer, such action should be made part of the formal minutes of the proceedings of the administrative board. Then, the controller as secretary of the administrative board should attach a copy of the minutes approving the transfer to the letter of transfer and return it to the director of mental health for forwarding to the department of conservation.

If advice is desired in drafting the letter of transfer, I would be happy to assign one of my assistant attorneys general to help in this regard.

FRANK J. KELLEY,

Attorney General
631118.4

TAXATION: Corporate Annual Privilege Fee Act.

CORPORATION & SECURITIES COMMISSION: Definition of "earned surplus."

LEGISLATURE: Constitutionality of Senate Bill 1046 and House Bill 54, 1963 Ex. Sess.

Senate Bill 1046 and House Bill 54, 1963 Extra Session, Michigan 72nd Legislature, which would amend § 4 of Act 85, P.A. 1921 as amended, to define "earned surplus" taxable therein to mean the retained earnings of a corporation as reflected on its balance sheet, so long as they are determined in accordance with generally accepted principles of accounting, are unconstitutional in that they would delegate to private parties the power to include or exclude items in determining "retained earnings" for the balance sheet statement without legislative definitional standards.

No. 4242

November 18, 1963.

Hon. Lenton G. Sculthorp

Commissioner

Corporation & Securities Commission

Lansing, Michigan

You request the opinion of the Attorney General on the following question:

⁴ M.S.A. Cur. Mat. § 14.861(3), p. 800-801.