

power to "spot check" municipalities to determine whether special assessment bond proceeds are being diverted from the purposes specified in applications upon which state approval of such bond issues were based.

FRANK J. KELLY,  
*Attorney General.*

640409.3

**CONSTITUTIONAL LAW: Legislature.**

A legislator is serving in the legislature when he has been elected to either the House of Representatives or the Senate, has taken the oath of office and been seated by the house to which he was elected. He is "serving" as a member of the legislature so long as he has the right to occupy a seat in the house to which he was elected. His right to serve may be terminated in accordance with provisions of the Michigan Constitution and applicable sections of the Michigan Election Law.

No. 4281

April 9, 1964.

Hon. John W. Fitzgerald  
Senator  
The Capitol  
Lansing, Michigan

You ask my opinion of the meaning of the words "and serving in" as used in provisions of the Michigan Constitution of 1963 referring to a majority of senators elected to and serving in the Senate. For example, Article IV, Section 14, requires the presence of a majority of the senators elected to and serving in the Senate to constitute a quorum to do business; expulsion of senators may be ordered by a two-thirds vote of all of the senators elected and serving in the Senate in accordance with Article IV, Section 16; no bill shall become a law without the concurrence of a majority of the members elected to and serving in each house as set forth in Article IV, Section 26.

Your question arises because the word "serving" was added in the Michigan Constitution of 1963 and specifically was not found in the Michigan Constitution of 1908. The constitutional provision at issue is clear when given its ordinary meaning and no legal construction is required. *People v. Board of State Canvassers* (1949), 323 Mich. 523.

A legislator is serving in the legislature when he has been elected to either the House of Representatives or the Senate, has taken the oath of office and has been seated by the house to which he was elected. He continues to serve unless he vacates his office.

Whether or not his office has been vacated depends upon the application of the following rule: An office is not vacant so long as it is supplied in the manner provided by law with an incumbent who is legally qualified to exercise the powers and perform the duties which appertain to it; and, conversely, an office is vacant whenever it is unoccupied by a legally qualified incumbent who has a lawful right to continue therein until the happening of some

future event.<sup>1</sup> A legislator's office becomes vacant before the expiration of his term upon the happening of any of the following events as listed in Section 176 of the Michigan Election Law:

"The death of the incumbent; his resignation; his removal from office; his ceasing to be an inhabitant of the district for which he shall have been elected; the decision of a competent tribunal declaring void his election or appointment; or his refusal or neglect to take and subscribe to his oath of office."<sup>2</sup>

A vacancy is created when a member is recalled from office.<sup>3</sup> A member who has been expelled by the house of which he has been a member cannot be considered to be a member serving in that house.<sup>4</sup>

After a person has been elected to the legislature, has taken the oath of office, and been seated by action of the house to which he has been elected, he becomes a member of the legislature and has the right to occupy a seat as such member and so long as this right continues he is "serving" in the house to which he was elected. His right to continue to serve may be terminated for any of the reasons set forth in this opinion.

FRANK J. KELLEY,  
*Attorney General.*

640409.4

**MOTOR VEHICLES:** Moving violation of the traffic laws — assessment of points.

It is a misdemeanor for any person to drive or move, or for the owner to cause or knowingly permit to be driven or moved on the public highway, any vehicle which does not have thereon the required equipment, or which equipment is not in proper condition. An abstract of the court record of any conviction of violation of appropriate provisions of the Michigan vehicle code is required to be forwarded to the Secretary of State, who is to record the same and assess points in accordance with section 320a of the Michigan vehicle code.

No. 4302

April 9, 1964.

Honorable James M. Hare  
Secretary of State  
The Capitol  
Lansing, Michigan

By your recent letter you state:

"Your opinion is requested as to whether abstracts of conviction of persons for driving vehicles which do not have required equipment

<sup>1</sup> *Toy, ex rel. Elliott v. Voelker* (1935), 273 Mich. 205.

<sup>2</sup> Act 116, P.A. 1954, as last amended by Act 63, P.A. 1963, Second Extra Session, M.S.A. Current Material § 6.1176.

<sup>3</sup> People may recall the member of the legislature under Article II, Section 8 of the Michigan Constitution of 1963, and Section 180 of Act 116, P.A. 1954, as last amended by Act 63, P.A. 1963, Second Extra Session, M.S.A. Current Material § 6.1180.

<sup>4</sup> Constitution of 1963, Article IV, Section 16.

in proper condition and adjustment as provided in Chapter VI of Act 300, P.A. 1949, as amended, shall be forwarded to the Department under the provisions of Section 732 of said Act.

"If such abstracts of conviction are required to be forwarded, is the Department required to record and assess points for these convictions under the provisions of Section 320a of said Act?"

The Michigan vehicle code<sup>1</sup> requires that a vehicle driven or moved on the public highways have certain equipment. For example, the required equipment includes head lamps,<sup>2</sup> rear lamps,<sup>3</sup> stop lights,<sup>4</sup> brakes,<sup>5</sup> and horn.<sup>6</sup> Section 683 specifies:

"(a) It is a misdemeanor for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this chapter, or which is equipped in any manner in violation of this chapter, or for any person to do any act forbidden or fail to perform any act required under this chapter."

It will be noted that violation of the above provision is declared to be a misdemeanor.

Section 732<sup>7</sup> cited by you requires the forwarding to you of an abstract of the court record of a conviction of violation of "any provision of this act or any city or village ordinance corresponding thereto regulating the operation of vehicles on highways." That duty is placed upon the magistrate or judge of a court not of record, and on the clerk of a court of record. It follows, in answer to your first question, that section 732 requires the forwarding to you of an abstract of a conviction of a charge of violating section 683, or any other comparable provision of the act.

Section 320a<sup>8</sup> provides in part:

"Section 320a. (1) The division of driver and vehicle services, within 10 days after the receipt of a properly prepared abstract, shall record the date of conviction and the number of points for each conviction based on the following formula:

"\* \* \*

<sup>1</sup> Act No. 300, P.A. 1949, being C.L.S. 1961 § 257.1 et seq., M.S.A. 1960 Rev. Vol. and M.S.A. 1963 Cum. Supp. § 9.1801 et seq. Certain sections have since been amended.

<sup>2</sup> Section 684, as last amended by Act No. 58, P.A. 1963, and section 685, as amended by Act No. 22, P.A. 1957.

<sup>3</sup> Section 686.

<sup>4</sup> Section 687, et seq.

<sup>5</sup> Section 705.

<sup>6</sup> Section 706.

<sup>7</sup> As amended by Act No. 270, P.A. 1951.

<sup>8</sup> Section 320a was added by Act No. 180, P.A. 1958, and was last amended by Act No. 34, P.A. 1963.

“(i) All other moving violations pertaining to the operation of motor vehicles reported under this section.....2 points

“\* \* \*

“(4) If a person has accumulated 9 points as provided herein, the director may call said person in for an interview as to his driving ability and record after due notice as to time and place of said interview. In the event the person fails to appear as provided herein, the director shall add 3 points to his record.”

The term “other moving violations pertaining to the operation of motor vehicles,” as used in subsection (1)(i) above, would include violations of section 683. Aside from the number of points to be assessed therefor, there is no basis for differentiating between a violation of section 683 and any other moving violation expressly enumerated in section 320a. Therefore, the Secretary of State is required to record each conviction of any such violation, abstract of which is forwarded to you, and to assess two points for each such conviction as specified by that section.

FRANK J. KELLEY,  
*Attorney General.*

640409.5

**INITIATIVE:** Effective date of enactment of initiative petition into law.  
**TENURE OF TEACHERS:** Effective date of mandatory tenure.

**Initiative petition calling for mandatory tenure in Michigan school districts enacted into law by the legislature becomes effective 90 days after the final adjournment of the legislature when the initiative petition does not specify that the enactment shall be immediately effective.**

No. 4313

April 9, 1964.

Dr. Lynn M. Bartlett  
Superintendent of Public Instruction  
The Capitol  
Lansing, Michigan

You have requested my opinion on the following question:

When does the law proposed by initiative petition enacted by the Michigan legislature making tenure of teachers mandatory in Michigan become effective?

An initiative petition seeking to amend Act 4, P.A. 1937, Extra Session, as last amended by Act 242, P.A. 1963, being C.L. 1948 § 38.71 et seq.; M.S.A. 1959 Rev. Vol. and 1963 Cum. Supp. § 15.1971 et seq., to make tenure of teachers mandatory in Michigan, was enacted by the Michigan legislature in accordance with resolutions approved by the Senate on March 10, 1964, and by the House of Representatives on March 12, 1964. The Secretary of State has entitled such enactment as Act 2, P.A. 1964.

The aforesaid initiative petition did not specify by its provisions that should the legislature enact the initiative petition into law, the law would become immediately effective.