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MICHIGAN HIGHER EDUCATION ASSISTANCE AUTHORITY: Appointment of members — Term of Office.

The governor is empowered to appoint 13 members to the Michigan Higher Education Assistance Authority in accordance with Sec. 2 of Act 77, P.A. 1960, as amended by Act 218, P.A. 1964, such appointments to be made so that the terms of one-fourth of the members of the Authority shall expire each year.

No. 4332

June 17, 1964.

Hon. George Romney
Governor of Michigan
Lansing, Michigan

Act 77, P.A. 1960, being C.L.S. 1961, § 390.951 et seq.; M.S.A. 1963 Cum. Supp. § 15.2097(1) et seq., created the Michigan Higher Education Assistance Authority and prescribed its powers and duties.

As originally enacted, Sec. 2 of Act 77, P.A. 1960, supra, provides as follows:

“The authority shall consist of the superintendent of public instruction, ex officio, who shall be chairman, 2 representatives from private colleges located within the state, 2 representatives from the universities and colleges within this state under the jurisdiction of the state board of education, 1 representative from community colleges located within this state, and 1 representative each from the university of Michigan, Michigan state university, Wayne state university and the college of mining and technology, to be appointed by the governor with the advice and consent of the senate.”

The legislature amended Sec. 2 of Act 77, P.A. 1960 through Act 218, P.A. 1964, and as amended, Sec. 2 now reads:

“The authority shall consist of the superintendent of public instruction, ex officio, who shall be chairman, 2 representatives from private colleges located within this state, 1 representative from community colleges located within this state, 1 representative each from the university of Michigan, Michigan state university and Wayne state university, 3 representatives from all other state-supported four-year colleges and universities within the state, 1 representative from the secondary schools of the state, and 3 representatives from the citizens of the state chosen for their interest in higher education but not employed by, professionally affiliated with, or on the governing body of any college, university or public high school of this state, to be appointed by the governor with the advice and consent of the senate.”

The legislature did not amend Sec. 3 of Act 77, P.A. 1960, which provides:

“The terms of office of the members of the authority shall be 4 years, and they shall hold office until the appointment and qualification of their successors, except that the original members shall be appointed in such manner as to provide for the expiration each year of the terms of one-fourth of the members. The governor may remove any member for misfeasance, malfeasance or nonfeasance in office, after hearing.”

The legislature ordered immediate effect for Act 218, P.A. 1964, and the act was approved by the Governor on May 22, 1964.

You request my opinion on the following questions:

1. Does Sec. 2 of Act 77, P.A. 1960, as amended by Act 218, P.A. 1964, create an entirely new board so that the governor is authorized thereunder to fill the 13 positions provided by law?

2. In the event the answer to the first question is "no," do the two representatives from the private colleges appointed pursuant to Sec. 2 of Act 77, P.A. 1960, prior to amendment by Act 218, P. A. 1964, still remain on the Board, and do the terms of the representatives from the community colleges, Wayne State University and Michigan State University, which expire this year, become vacated for a period of four years?

3. In the event that the answer to the first question is "no," are the persons representing the colleges and universities previously under the jurisdiction of the State Board of Education and also the person representing the Michigan College of Mining and Technology, qualified to continue serving on the Authority and, if so, do they automatically become the three representatives from all of the other state-supported four-year colleges and universities within the state? Must anything be done to designate them as such appointees by way of letter from the governor to the secretary of state, or must they be renominated and confirmed by the senate?

4. Are the three public representatives and the one representative of secondary schools all to be given four year terms or does Sec. 3 of Act 77, P.A. 1960 apply so that they must be appointed for staggered terms?

1. Through Act 218, P.A. 1964, the legislature has prescribed that the Higher Education Assistance Authority be composed of the superintendent of public instruction, ex officio as chairman, and 13 members to be appointed by the governor with the advice and consent of the senate. Previous to the enactment of Act 218, P.A. 1964 the membership of the Michigan Higher Education Assistance Authority was composed of the superintendent of public instruction, ex officio as chairman and 9 members.

Not only has the legislature ordered that the Michigan Higher Education Assistance Authority be increased in membership from 9 to 13 members, it has also enumerated the type of public and private colleges and universities, secondary schools and private citizens that shall be represented on the Authority. The legislature has modified the representation upon the Authority in addition to increasing the number of its members.

Sec. 2 of Act 77, P.A. 1960, supra, as it has been amended by Act 218, P.A. 1964, does not purport by express terms to retain any of the present members of the Michigan Higher Education Assistance Authority appointed by the governor and confirmed by the senate in accordance with Sec. 2 of Act 77, P.A. 1960, prior to its amendment in 1964.

The law appears to be well settled in Michigan that where a section of a statute is amended, the original ceases to exist, and the section as amended supersedes it and becomes a part of the statute for all intents and purposes as if the amendments had always been there. The whole section is stricken from the law and the provisions carried over have their force from the new act, not from the old act. In the absence of a saving clause preserving

the status quo, the section amended is obliterated entirely and a new section is substituted in its place. *People v. Lowell*, 250 Mich. 349 (1930); *Lahti v. Fosterling*, 357 Mich. 578 (1959).

Under these well defined principles of statutory construction, a saving clause being absent in Sec. 2 of Act 77, P.A. 1960, as amended by Act 218, P.A. 1964, the conclusion must follow that the legislature intended to create the Michigan Higher Education Assistance Authority as a new body to be composed of the superintendent of public instruction and 13 members to be appointed by the governor with the advice and consent of the senate.

Public offices created by the legislature may be abolished by the legislature and no officeholder has a contractual right to such office. *Attorney General v. Guy*, 334 Mich. 694 (1952).

In *Sprister v. City of Sturgis*, 242 Mich. 68 (1928), the Michigan Supreme Court upheld the authority of the electors of a city to amend the city charter to provide for a city commission of 9 members in place of a city commission of 5 members, and such action was deemed to abolish the then present commission of the city.

Public offices created by statute are subject to being abolished by action of the legislature even though done within the terms for which the incumbents were appointed. *MacDonald v. DeWaele*, 263 Mich. 233 (1933).

The clear intention of the legislature in providing for an entirely new Michigan Higher Education Assistance Authority with the passage of Act 218, P.A. 1964, is strengthened by examination of Sec. 3 of Act 77, P.A. 1960, supra, which provides for the expiration of the terms of members of the Authority. It is significant that the legislature in the enactment of Act 218, P.A. 1964, made no amendment to Sec. 3 of Act 77, P.A. 1960, supra. Thus, for the purposes of Sec. 3 of Act 77, P.A. 1960, the 13 members of the Michigan Higher Education Assistance Authority to be appointed by the governor with the advice and consent of the senate are to be appointed by him in such manner as to provide for the expiration each year of the terms of one-fourth of the members since the 13 members are those to be appointed as provided in Sec. 2 of Act 77, P.A. 1960, as amended by Act 218, P.A. 1964. The legislature could, but failed to provide that certain of the present members of the Michigan Higher Education Assistance Authority could continue to serve in office until their present terms expired. Statutes will not be given retroactive effect unless the legislative intent to so require is clearly apparent. *Barber v. Barber*, 327 Mich. 5 (1950); *Melcher v. Employment Security Commission*, 335 Mich. 122 (1952).

Therefore, it is my opinion, in answer to your first question, that Sec. 2 of Act 77, P.A. 1960, as amended by Act 218, P.A. 1964, orders an entirely new Michigan Higher Education Assistance Authority to be composed of 13 members as provided by law, the appointments to be made by the governor with the advice and consent of the senate.

2. The answer to the first question makes it unnecessary to answer the second question.

3. The answer to the first question makes it unnecessary to answer the third question.

4. In response to your fourth question, a plain reading of Act 77, P.A. 1960, supra, is sufficient. The governor is authorized to appoint 13 members to the Michigan Higher Education Assistance Authority, including the three public representatives and one representative from the secondary schools, such appointments to be made so that the terms of one-fourth of the members of the Authority shall expire each year.

Therefore, it is my opinion that the governor is authorized to appoint the 13 members of the Michigan Higher Education Assistance Authority as provided in Sec. 2 of Act 77, P.A. 1960, as amended by Act 218, P.A. 1964, supra, and for each person so appointed to specify a term of office to expire at such time so that the terms of one-fourth of the members of the Authority shall expire each year.

FRANK J. KELLEY,
Attorney General.

040630.1
PUBLIC OFFICERS AND OFFICES – INCOMPATIBILITY: Township
board of review and board of education.
SCHOOLS: Township Board of Education, Member of.
TOWNSHIPS: Board of Review.

The offices of member of the township board of review and member of the local board of education in the same township are incompatible if held by the same person.

No. 4307

June 30, 1964.

Honorable Paul M. Chandler
State Representative
33050 Five Mile Road
Livonia, Michigan

You have requested my opinion on a question stated by you as follows:

“May the same citizen serve simultaneously as a member of the Township Board of Review and as a member of a Board of Education within the same Township?”

No constitutional or statutory provision has been found directly prohibiting the simultaneous holding of the two offices mentioned in your question by the same person; therefore, resort must be had to the applicable principles of the common law. Under the common law duality of office holding per se was not unlawful but came under scrutiny if the nature of the two offices was such as to make them incompatible in that an undertaking by the same person to faithfully perform the duties of each would or might be contradictory. This is but recognition of the ancient biblical proverb that a man cannot serve two masters.

The rule of incompatibility has been often recognized and applied by the Attorney General. In Opinion No. 927 issued by Attorney General Roth on April 27, 1949 the applicable rule was stated by him in this way:

“At common-law offices are not incompatible unless their functions are inconsistent. Incompatibility is not simply a physical impossibility