

CONSTITUTIONAL LAW: Passage of appropriation bills.

LEGISLATURE: Appropriation bills, passage prior to voting upon Governor's general appropriation bills.

GOVERNOR'S BUDGET: Passage of bills for item not in.

The Governor's general appropriation bills for the succeeding fiscal year must be passed or rejected in either house of the legislature before that house passes any appropriation bills for items not in the budget, except bills supplementing appropriations for the current fiscal year's operation.

The passage of a bill increasing the number of circuit judges above the present number of 86 in the state is an "appropriation bill" as that term is used in Article IV, Section 31 of the 1963 Constitution. Inasmuch as the budget contains an item for the salary and expense of the 86 circuit judges of the state it is not an "appropriation bill for items not in the budget." The same is true of a bill increasing the number of members of the workmen's compensation appeal board, although no recommendation for such increase was contained in the budget.

The passage of a bill amending Section 307 of the Michigan vehicle code, which section previously provided for the placing of the licensee's photograph upon operator's and chauffeur's licenses, is not prohibited by Article IV, Section 31, since an item therefor was included in the budget.

Prior to passage or rejection of the Governor's general appropriation bills, passage of a bill appropriating funds to acquire certain property was unauthorized as the budget contained no item for that purpose. For that reason the appropriation was unconstitutional and void, as contrary to Article IV, Section 31 of the Michigan Constitution of 1963, and did not authorize the expenditure of the appropriation purported to be made thereby.

No. 4352

July 27, 1964.

Honorable Joseph A. Gillis
State Representative
2312 Guardian Building
Detroit 26, Michigan

The question presented in your recent letter arises out of the following factual situation:

On April 14, 1964, the House of Representatives passed on third reading the following bills:

House Bill No. 79, providing for an additional judge in the 9th judicial circuit.

House Bill No. 645, providing for an additional judge in the 16th judicial circuit.

House Bill No. 509, providing for two additional members of the workmen's compensation appeal board.

House Bill No. 512, amending the statute providing for photographs upon motor vehicle operator's and chauffeur's licenses.

House Bill No. 776, authorizing the Michigan Historical Commission to acquire property for historic sites.

With the exception of House Bill No. 512, you voted against each of those bills, and having reserved the right to enter your protest against the passage of the respective bills, made a statement raising the question of the right of the House of Representatives to pass the same at that time, inasmuch as the House had not then passed all of the Governor's general appropriation bills. Your objection was based upon Article IV, Section 31 of the 1963 Constitution, reading:

"The general appropriation bills for the succeeding fiscal period covering items set forth in the budget shall be passed or rejected in either house of the legislature before that house passes any appropriation bill for items not in the budget except bills supplementing appropriations for the current fiscal year's operation. Any bill requiring an appropriation to carry out its purpose shall be considered an appropriation bill. One of the general appropriation bills as passed by the legislature shall contain an itemized statement of estimated revenue by major source in each operating fund for the ensuing fiscal period, the total of which shall not be less than the total of all appropriations made from each fund in the general appropriation bills as passed."

O.A.G. No. 4292, issued by this office on March 16, 1964, held that each house of the legislature is required by Article IV, Section 31 to pass or reject the Governor's general appropriation bills for the ensuing fiscal year covering items relating to operating funds set forth in the executive budget before that house passes any appropriation bill for items not in the executive budget, except bills supplementing appropriations for the current fiscal year's operation.

At the time of the passage by the House of Representatives of the five bills above enumerated, neither house of the legislature had passed or rejected all of the Governor's general appropriation bills covering the items relating to operating funds as set forth in the executive budget. Therefore, as of that date any appropriation bill for items not in the budget, except bills supplementing appropriation for the current fiscal year's operation were within the terms of the above quoted mandate to the legislature. There is no question but that each of the five bills, except House Bill No. 512, were appropriation bills as that term is defined in said Section 31 of Article IV, which states:

"* * * Any bill requiring an appropriation to carry out its purpose shall be considered an appropriation bill. * * *"

Furthermore, there is no question but that none of the five bills is within the exception pertaining to supplemental appropriations for the current fiscal year's operation. As to the four bills other than House Bill 512, there is but one legal question remaining: are these four bills "for items not in the budget"?

The term "budget" as used in Article V, Section 18, and Article IV, Section 31 of the Constitution is construed to refer to the budget for the ensuing fiscal year submitted by the Governor to the legislature pursuant to Article V, Section 18. The budget consists of two separate documents (1) "The Executive Budget" and (2) "State Operations and Local Benefits Budget" commonly referred to as the "Budget Detail," in which is set

forth the breakdown of the various items in the budget together with other details of certain items included therein.

Consideration will now be given to the respective bills.

House Bill No. 79 (P.A. No. 264) and House Bill No. 645 (P.A. No. 198) provided for an additional circuit judge in each of two judicial circuits. The budget includes an item of \$1,350,000 for circuit courts. The explanatory note in the budget detail reads:

"The state portion of the salaries of 86 circuit judges and the judge of the Superior Court of Grand Rapids, together with necessary traveling expenses when assigned to another circuit, are recommended as requested." (Budget Detail p. A-57)

Thus the budget contains an item appropriation, the state's portion of the salary of 86 circuit judges, together with their necessary traveling expenses. The two judges which would be authorized by these bills are in addition to the 86, provision for the payment of the salary and expense of whom is contained in the above item. As stated above, each of these two bills is an "appropriation bill" as that term is defined in Article IV, Section 31. Inasmuch, however, as the budget includes an item for the payment of the salary and expense of the circuit judges of the state, neither of these bills is an "appropriation bill for items not in the budget" within the prohibition of that section.

In that connection it is pointed out that O.A.G. No. 4292 recognized the authority of the legislature to amend the provisions of the Governor's general appropriation bills prior to passing or rejecting the same, stating:

"* * * This does not mean that the legislature is required to pass or reject the general appropriation bills in the precise form in which they were submitted to each house of the legislature, it being my opinion that either house of the legislature is at liberty to amend the governor's general appropriation bills on general orders."

In passing it is noted that during the consideration of House Bill No. 524, one of the general appropriation bills, a substitute bill was adopted, which as finally passed became Act No. 277, and included an appropriation for the salary and expense of:

"Circuit judges and Superior Court of Grand Rapids (89)."

It follows that passage at that time of House Bill Nos. 79 and 645 was not prohibited by Article IV, Section 31.

House Bill No. 509 (P.A. No. 266), as amended, increased the number of the members of the workmen's compensation appeal board from three to five. The budget contains an item for the salary of the three present members, with respect to which the budget detail states:

"Unclassified Appeal Board Members—3—\$43,500." (Budget Detail, p. H-36)

While the budget did not include any recommendation for increasing the number of appeal board members, nevertheless, this would not, of course, preclude adoption by the legislature of a bill providing therefor. Applying the same reasoning as that set forth above with respect to House

Bills 79 and 645, passage of House Bill 509 at that time was not prohibited by Article IV, Section 31.

During consideration of House Bill No. 527, one of the general appropriation bills, a substitute bill was adopted which as finally passed became Act No. 276, and included an appropriation to the workmen's compensation commission for the salary of:

"Members of appeal board (5)—\$70,000."

House Bill No. 512 was amended during its consideration in the Committee of the Whole (House Journal No. 55, p. 1203), so that as passed by the House of Representatives section 307(b) read:

"(b) Each applicant for an operator's or chauffeur's license shall be photographed simultaneously at the time the application for the respective license is made. The applicant shall pay in addition to the regular fee a sum of 50 cents for the cost of processing the photograph. Such fee shall be forwarded to the secretary of state and credited to the general fund. The secretary of state shall acquire by purchase or lease the equipment for taking the pictures and furnish it to the local unit. No fees shall be collected under the provisions of this subsection, nor shall any equipment be purchased or leased until an appropriation therefore has been made by the legislature after a budget request has been properly presented to it. **THE PHOTOGRAPH SHALL APPEAR ON THE APPLICANT'S DRIVER'S LICENSE ONLY AND NO PHOTOGRAPH SHALL BE KEPT ON FILE BY THE SECRETARY OF STATE OR ANY OTHER ENFORCEMENT AGENCY.**"

The bill was amended further by the Senate (House Journal No. 72, p. 1779) which amendments were concurred in (House Journal No. 74, p. 1874) and the Enrolled Bill signed by the Governor as P.A. No. 260.

This is the one bill of the five in question which is not clearly an appropriation bill according to the definition contained in Article IV, Section 31. Whether or not House Bill 512 had been enacted into law, section 307(b) of the Michigan vehicle code required an appropriation in order to accomplish its purpose. Finally, if House Bill 512 were considered to be an appropriation bill, it would be for an item in the budget. The pertinent item in the budget detail reads:

"Driver License Photos—\$25,000." (Budget Detail, p. A-47)

The explanatory note reads:

"As a part of the Governor's special program on traffic safety, a pilot project to place photographs on the licenses of approximately 100,000 selected drivers is recommended. This project, together with others, has been urged by the Chiefs of Police as a step toward reducing traffic accidents." (Budget Detail, p. A-43)

Thus, the relevant item in the budget does include a recommended appropriation for placing photographs on drivers' licenses.

The substitute for House Bill No. 524 (P.A. No. 277) included an appropriation to the secretary of state as one of the "special programs."

"Driver license photos—as provided in section 307 of Act No. 300 of the Public Acts of 1949, as amended, being section 257.307 of the Compiled Laws of 1948500,000.00"

The budget does include a recommended appropriation for the Michigan Historical Commission, with respect to which the budget detail states:

"Special Programs—State Operations—\$5,000." (p. B-44)

The explanatory note reads:

"\$5,000 is recommended for special programs as follows: \$3,000—publishing Messages of the Governors. Messages of governors from 1824 to 1927 have all been published. The recommended amount will serve to initiate a three-year program which will result in publishing all governors messages from 1927 to the present. \$1,000—to micro-film governors records and selected documents damaged in Cass Building fire. \$1,000—to refinish historical markers which have faded over the years." (Budget Detail, p. B-44)

House Bill No. 776 (P.A. No. 249) proposed certain amendments to section 2 of Act No. 10, P.A. 1955, being C.L. 1948 § 399.152. A number of amendments to the bill were adopted in the Committee of the Whole (House Journal No. 56, pp. 1220-21). As passed by the House of Representatives section 2 of Act No. 10, read:

"If, in the judgment of the ~~Michigan historical~~ commission, such site, **ACQUIRED FOR IT BY THE STATE**, is of sufficient general historical interest, ~~they~~ **IT** shall list ~~such~~ **THE** site in a register kept for that purpose and shall authorize to be displayed at ~~such~~ **THE** site a suitable numbered marker, approved by the commission as to text and construction, indicating that ~~such~~ **THE** site is a registered state historic site. ~~Such~~ **THE** marker shall not bear the name of any commissioner or state official.

"**THE SUM OF \$20,000.00 IS APPROPRIATED FROM THE GENERAL FUND TO ACQUIRE, IMPROVE, MAINTAIN AND OPERATE THE PROTAR PROPERTY LOCATED ON BEAVER ISLAND DESCRIBED AS: THE SE 1/4 OF SW 1/4 OF SECTION 5, THE SW 1/4 OF SE 1/4 OF SECTION 5, THE NE 1/4 OF SE 1/4 OF SECTION 5, THE NW 1/4 OF THE SE 1/4 OF SECTION 5, LOT 3, SECTION 5, LOT 4, SECTION 5, AND THE NE 1/4 OF NW 1/4 OF SECTION 8, ALL IN T 38 N, R 10 W.**"

The bill was amended by the Senate (House Journal No. 72, p. 1777):

"If, in the judgment of the ~~Michigan historical~~ commission, such site is of sufficient general historical interest, ~~they~~ **IT** shall list ~~such~~ **THE** site in a register kept for that purpose and shall authorize to be displayed at ~~such~~ **THE** site a suitable numbered marker, approved by the commission as to text and

construction, indicating that ~~such~~ THE site is a registered state historic site. ~~Such~~ THE marker shall not bear the name of any commissioner or state official.

“THE SUM OF NOT TO EXCEED \$12,000.00 IS APPROPRIATED FROM THE GENERAL FUND FOR THE FISCAL YEAR ENDING JUNE 30, 1965, TO THE COMMISSION TO RESTORE THE PROTAR PROPERTY ON BEAVER ISLAND AS FOLLOWS: WEATHER PROOFING, OTHER RESTORATION OF THE INTERIOR AND EXTERIOR OF THE BUILDING, INSTALLING EXHIBIT CASES INSIDE THE STRUCTURE, PROVIDING ADEQUATE WATER SUPPLY BY DRILLING A NEW WELL, PROVIDING TOILET FACILITIES, GRAVELING ACCESS ROAD, PROVIDING ADEQUATE PARKING AREA AND PICNIC TABLES, ROOFING THE BARN, AND FENCING PROPERTY.”

The budget contains no item to “acquire, improve, maintain and operate” or to “restore” the so-called Protar property. Therefore, it must be concluded that House Bill No. 776 proposed to appropriate moneys for a purpose for which there was no item in the budget and that passage of the bill (House Journal No. 59, p. 1300) on April 14, 1964 was in contravention of the constitutional (Article IV, Section 31) mandate to the legislature.

What is the effect of such violation? In other words, does such violation of the constitutional mandate render Act No. 249 unconstitutional and void? At the outset it may be conceded that the Supreme Court has held that it is without jurisdiction to enforce certain provisions of the 1908 Constitution imposing a duty upon the legislature, although the same was construed to be mandatory. For example:

The sales tax diversion amendment (Article X, Section 23) as originally adopted in 1946 contained the following provision:

“* * * The legislature shall hereafter make annual grants to school districts out of general funds, over and above all constitutional allocations heretofore and herein provided, in at least amounts which bear the same ratio to total state sales tax revenues of the preceding year which the legislative grants in the fiscal year 1945-1946 bore to said revenues of the preceding year.”

In *City of Jackson v. Commissioner of Revenue*, 316 Mich. 694, the court rejected the contention that such provision was self-executing, stating at pp. 719-20:

“A further claim is made by the school districts, that the concluding sentence of the amendment, directing the legislature to make annual ‘grants’ (i.e., appropriations) for school districts, is also self-executing. We agree that this provision is mandatory to the extent that it is the duty of the legislature to make the appropriations referred to. It is the constitutional duty of the legislature to make the annual ‘grants’ in accordance therewith, and to that extent this requirement is

mandatory. But the difference between the language in this concluding sentence and the directions preceding it in the amendment is significant. The 'tax collecting authority,' i.e., the defendants in this case, are directed by the amendment to 'return' or to 'remit' to the county treasurers and the school districts a certain part of the sales tax collections. This is a clear mandatory duty, and it is within the province of this Court to issue the writ directing these State officials to comply with that constitutional mandate. But the plaintiff school districts are not here asking the Court to order the legislature to make the appropriations referred to in the concluding sentence of the amendment. Nor has the legislature yet refused to do so. Presumably, the legislature will obey the mandate, but it is not within the power or the province of the Court to order the legislature to do so. * * *

To the same effect see *Board of Education of the City of Detroit v. Superintendent of Public Instruction*, 319 Mich. 436, 454, 456.

The Civil Service amendment to the 1908 Constitution (Article VI, Section 22) required the legislature to appropriate annually to the Commission not less than 1% of the aggregate annual payroll of state service. In *Civil Service Commission v. Department of Administration*, 324 Mich. 714, 723-24, such provision was held not to be self-executing.

At the same time the court has recognized that in passing legislation compliance must be had with various constitutional requirements and limitations and that failure to do so would have the effect of invalidating the action taken in contravention thereof, including the passage of legislation.

Article V, Section 14, which is similar to Article IV, Section 14 of the 1963 Constitution, prescribed the number of members constituting a quorum. In *Wilson v. Atwood*, 270 Mich. 317, 321, the court held that action taken at a joint convention of the legislature at which, due to a catastrophe, a quorum was not present to be a nullity.

Article V, Section 23, which is similar to Article IV, Section 26 of the 1963 Constitution, requires that every bill shall be read three times in each house before final passage. In *McClellan v. Judge of Recorder's Court of Detroit*, 229 Mich. 203, the court held an act to be unconstitutional inasmuch as the journal of the House of Representatives failed to show that the bill was read a third time.

Article IV, Section 28 of the 1963 Constitution prohibits the passing at a special session of a bill on any subject other than those stated in the Governor's proclamation or submitted by special message. Similar provision is contained in Article V, Section 22 of the 1908 Constitution. In *Smith v. Curran*, 268 Mich. 366, the Supreme Court held Act No. 31, Public Acts of the Extra Session of 1934 to be unconstitutional inasmuch as the subject matter thereof was not limited to that specified by the Governor, and refused to issue the court's writ of mandamus to require the execution of refunding bonds upon the authority of that act.

Article V, Section 24 of the 1908 Constitution, which is similar to Article IV, Section 30 of the 1963 Constitution, requires the vote of 2/3 of the members of each house to pass a bill appropriating public money for local or private purposes. The 1899 legislature passed a joint resolution

purporting to appropriate moneys to an individual who while innocent had been convicted of a criminal offense and served time in state prison. Such appropriation was held to be invalid inasmuch as the resolution did not receive a 2/3 vote of the members of the senate as required by Article IV, Section 45 of the 1850 Constitution. *Allen v. Board of State Auditors*, 122 Mich. 324, 328.

Article V, Section 36, which is similar to Article IV, Section 33 of the 1963 Constitution, places certain definite limitations upon the authority of the Governor to sign or veto bills. Violation of such limitations was held to render ineffective the action taken by the Governor in disapproving certain items of appropriation bill in *Wood v. State Administrative Board*, 255 Mich. 220.

The 1850 Constitution in Article IV, Section 28, as amended, provided prior to its repeal in 1904:

“No new bill shall be introduced into either house of the legislature after the first fifty days of a session shall have expired.”

The object of such provision was stated by the Supreme Court in *Attorney General v. Rice*, 64 Mich. 385, 388:

“The object of the Constitution, in providing that no new bill shall be introduced after the first 50 days of the Session (Art. 4, § 28) is—

“To prevent hasty and improvident legislation, and to compel, so far as any previous law can accomplish that result, the careful examination of proposed laws, or, at least, the affording of opportunity for that purpose.” *Cooley, Const. Lim.* 139.”

In *Sackrider v. Board of Supervisors of Saginaw County, et al*, 79 Mich. 59, 71, the Supreme Court affirmed the decree of the lower court holding Act No. 341 of the Local Acts of 1889 to be unconstitutional and void, and enjoined the issuance of bonds under the authority of that act. In that instance the bill which was passed was adopted following the expiration of the 50 days period as a substitute for a bill introduced during that period, but the substitute bill was not germane to the title of the original bill. To the same effect see *Attorney General v. The Detroit and Saline Plank Road Company*, 97 Mich. 589.

Article IV, Section 31 of the 1963 Constitution originated in the Constitutional Convention as Committee Proposal No. 46(b) having been introduced by the Committee on Executive Branch. *Official Record, Constitutional Convention 1961*, p. 1635. While not identical, section b was substantially the same as Section 31 of Article IV, as finally adopted. The reasons submitted by the Committee in support thereof stated in part:

“Sec. b. The second provision is intended to accomplish 2 major points: (a) to focus legislative attention on the general appropriation bill or bills to the exclusion of any other appropriation bills, except those supplementing appropriations for the current year’s operation; * * *.”

During the consideration of the proposal in the Committee of the Whole, the chairman of the committee gave the further explanation:

"MR. MARTIN: Mr. Chairman, just one additional word of explanation. The fundamental purpose of this section is to get the attention of the legislature to the main business of appropriations, that is, the general appropriation bills before it acts on so-called special bills for this, that, or the other thing, which are thrown in by individual legislators and which do not come from a consideration of the total needs of the state government and the total revenue. This seems to be the only way and the best way to do it, and it is certainly the orderly way to get these matters considered. We think it is an integral part of this whole proposal and makes extremely good sense in getting the legislature to consider the main problems first and then, if it is desired, to add additional appropriations. This does not prevent it. This does not prevent any special bill from being acted upon. It simply says, act on the main bills first." *Official Record, Constitutional Convention 1961*, p. 1653.

In order to accomplish such purpose this requirement was inserted in mandatory form. This is not a legislative rule which may be suspended or disregarded by the legislature as it sees fit. It is, instead, a constitutional limitation. Nor is this a case where the court's writ of mandamus is sought to require the legislature to comply with a constitutional mandate.

Instead, the issue presented is what is the effect of the failure, as evidenced by the legislative journals, to comply with the limitation prescribed by Article IV, Section 31. Upon that authority of the above cited cases, it is my opinion that Act No. 249 is unconstitutional and void, and for that reason does not authorize the expenditure of the \$12,000 appropriation purported to be made thereby.

FRANK J. KELLEY,
Attorney General.

640817.1

SCHOOLS: Districts — Transfer of territory between.
Consolidation — Assumption of debt.

Where territory is transferred from school district and appeal to the State Board of Education was duly taken, the transfer is not effective until the State Board of Education acts upon the appeal. Such territory is subject to the assumption of bonded indebtedness of a consolidated school district which is formed by favorable vote prior to the time that the State Board of Education acts upon the appeal.

No. 4199

August 17, 1964.

Hon. Fred O. Olsen
State Representative
328 S. Main Street
Sheridan, Michigan

You indicate that certain territory located in school district "A" was transferred by the intermediate board of education to school district "B" pursuant to Sec. 461 of Act 269, P.A. 1955, as amended. An appeal was