

appointed, 1 from each group shall be appointed for 1 year, 1 for 2 years and 1 for 3 years. The commissioner shall be secretary of the wage deviation board. A majority of the members of the board constitutes a quorum and the recommendation or report of the board requires a vote of not less than a majority of its members. Members of the board shall receive no compensation but may be reimbursed for actual and necessary expense while on official duty."

The Commissioner of Labor is not a member of the Board. Since the recommendations and reports of the Board require "a vote of not less than a majority of its *members*," it is clear that the Commissioner cannot vote on matters considered by the Board.

FRANK J. KELLEY,
Attorney General.

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CONSTITUTIONAL LAW: Exemption from taxation.
TAXATION: Power to grant exemption from income tax.

Article IX, § 7 of the Michigan Constitution of 1963, does not bar the legislature from exempting a certain dollar amount of gross income or a certain specified portion of a taxpayer's income or from providing exemptions for a taxpayer and his dependents similar to those provided for under the federal income tax law.

No. 4415

February 25, 1965.

Hon. Basil W. Brown
State Senator
The Capitol
Lansing, Michigan

Article IX, § 7 of the Michigan Constitution of 1963 provides as follows:

"No income tax graduated as to rate or base shall be imposed by the state or any of its subdivisions."

You ask my opinion on the following question:

Does Article IX, § 7 of the Michigan constitution of 1963 bar the legislature from the enactment of a flat rate income tax based on gross income at a specified rate and allow exemptions to taxpayers of a certain dollar amount of their gross income or to exempt certain specified portions of the taxpayer's income and provide exemptions for the taxpayer and his dependents similar to those provided under the federal income tax law?

The law appears well settled that the power to exempt from taxation is reposed in the legislature and subject only to constitutional limitation. *Auditor General v. MacKinnon Boiler & Machine Co.*, 199 Mich. 489 (1917); *Lucking v. People*, 320 Mich. 495 (1948).

In Article IX, § 4, the people have commanded that property owned and occupied by non-profit, religious or educational organizations shall be

exempt from real and personal property taxes. This provision of the Michigan Constitution grants a constitutional exemption of real and personal property owned and occupied by nonprofit corporations and used exclusively for religious or educational purposes and is not a limitation upon the power of the legislature to exempt other property from taxation.

In order to ascertain the intent and meaning of Article IX, § 7 of the Constitution of 1963, resort should be made to the Constitutional Convention Debates and the Address to the People. *Burdick v. Secretary of State*, 373 Mich. 578 (1964).

Article IX, § 7, supra, was considered by the Constitutional Convention as Committee Proposal No. 51 submitted to the Convention by the Committee on Finance and Taxation, to read, in part, as follows:

"NO INCOME TAX GRADUATED AS TO RATE OR BASE SHALL BE IMPOSED BY THE STATE OR ANY OF ITS SUB-DIVISIONS."

Official Record, Constitutional Convention 1961, page 853.

Delegate Brake, as chairman of the Committee on Finance and Taxation, submitted certain reasons in support of Committee Proposal No. 51, and relative to your inquiry stated the following reason:

"* * * The legislature could prescribe reasonable exemptions for a flat rate income tax."

Official Record, Constitutional Convention 1961, page 854.

In the debate that ensued, Delegate Austin was concerned that the committee proposal presented "a possibility that through the use of this language we may be prohibiting exemptions."

Delegate Van Dusen, in responding, said in part:

"We made it very clear in the committee report that a flat rate income tax could be made the subject of exemptions by the legislature. I don't think that anyone has disputed it. The committee report is intended to make that crystal clear. I cannot imagine that any court construing the language in the light of the committee report would doubt or question the right of the legislature to grant reasonable exemptions."

Official Record, Constitutional Convention 1961, pages 893-894.

The committee proposal constituting Article IX, § 7, was approved by the Convention without change.

In the Address to the People the Convention informed the people relative to Article IX, § 7 as follows:

"The legislature could prescribe reasonable exemptions for a flat rate tax."

The constitutional history was carefully considered in the opinion of the Attorney General No. 4295, dated May 14, 1964, which held that a city income tax imposed upon the income of residents and non-residents that recognizes in the tax base a differential between the amount of income earned or received from sources within the city by city residents and by

non-residents was not in violation of Article IX, § 7 of the Michigan Constitution of 1963.

Thus it is undisputed that the people, in approving the Michigan Constitution of 1963, clearly intended that the legislature possess the power to grant exemptions from any flat rate income tax imposed by it pursuant to Article IX, § 7.

Therefore, it is the opinion of the Attorney General that Article IX, § 7 of the Michigan Constitution of 1963 does not bar the legislature from exempting a certain dollar amount of gross income or a certain specified portion of a taxpayer's income, or from providing exemption for a taxpayer and his dependents similar to those provided for under the federal income tax law.

FRANK J. KELLEY,
Attorney General.

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SCHOOLS: Teachers on continuing tenure – failure to perform a valid written contract.

Under Article V, Section 1 of the Tenure of Teachers Act, a teacher on continuing tenure not under written contract for the ensuing school year may discontinue his services without penalty by giving written notice 60 days prior to September 1, or by mutual consent thereafter. A teacher on continuing tenure and under written contract for the ensuing school year cannot discontinue his services, and is subject to suspension of his teacher's certificate under Section 861 of the School Code of 1955, except when he discontinues his services with the consent of the controlling board.

No. 4397

March 1, 1965.

Honorable Russell Hellman
State Representative
The Capitol
Lansing, Michigan

Act 4, P.A. 1937 (Ex. Sess.) as amended,¹ is known as the Tenure of Teachers Act. Section 1 of Article V of the Act provides that:

“No teacher on continuing tenure shall discontinue his services with any controlling board except by mutual consent, without giving a written notice to said controlling board at least sixty (60) days before September first (1st) of the ensuing school year. Any teacher discontinuing his services in any other manner than as provided in this section shall forfeit his rights to continuing tenure previously acquired under this act.”

You point out that the quoted section permits one on continuing tenure to resign and preserve his rights to continuing tenure if the terms thereof are complied with.

¹ C.L. 1948, § 38.71 et seq.; M.S.A. 1959 Rev. Vol. § 15.1971 et seq.