I am persuaded that in the absence of authority, public funds cannot be expended by the county board of supervisors to print and distribute a pamphlet explaining the project in discussion to the electors and advocating electorate approval thereof, prior to the special referendum election. Likewise, there is absent authority to expend county funds for the purchase of advertisements advocating the project.

Accordingly, such queries are answered in the negative.

FRANK J. KELLEY,
Attorney General.

650319.1

BANKS AND BANKING: Limitations on loans.

The term "obligations" appearing in Section 74 of the Michigan Financial Institutions Act discussed and applied in determining when loans are to be combined for the purpose of the limitation on loans under the foregoing section.

No. 4364 March 19, 1965.

Mr. Charles D. Slay
Commissioner
State Banking Department
Lansing, Michigan

You have requested the opinion of the Attorney General on three questions to be hereafter stated concerning the interpretation and applicability of Section 74 of the Michigan Financial Institutions Act.[1] Section 74 of the Act about which you inquire was last amended by Act 115, P.A. 1963. To the extent pertinent the section now reads:

> "The total obligations to any bank of any person, copartnership, association or corporation shall at no time exceed 10% of the amount of the capital stock of such bank actually paid in and unimpaired and 10% of its unimpaired surplus fund. The term 'obligations' shall mean the direct liability of the maker or acceptor of paper discounted with or sold to such bank and the liability of the indorser, drawer or guarantor who obtains a loan from or discounts paper with or sells paper under his guaranty to such bank and shall include in the case of obligations of a copartnership or association the obligations of the several members thereof and shall include in the case of obligations of a corporation all obligations of all subsidiaries thereof in which such corporation owns or controls a majority interest: Provided, That these restrictions shall not apply to such obligations held by the bank on the date this section shall become effective or renewals thereof: Provided further, That upon approval by ⅔ vote of the board of directors, any bank may increase the limit provided by this section so that the total obligations to said bank of any person, co-

[1] Act 341 P.A. 1937, being C.L. 1948 § 487.1 et seq., M.S.A. 1957 Rev. Vol. § 23.711 et seq.

partnership, association or corporation shall at no time exceed 20% of the amount of the capital stock of such bank actually paid in and unimpaired and 20% of its unimpaired surplus fund."

Section 74 of the Michigan Financial Institutions Act has not received consideration by our Supreme Court. However, language substantially identical to that of Section 74 appears in Section 84 of the National Bank Act.[2] The pertinent language is:

"The total obligations to any national banking association of any person, copartnership, association, or corporation shall at no time exceed 10 per centum of the amount of the capital stock of such association actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund. The term 'obligation' shall mean the direct liability of the maker or acceptor of paper discounted with or sold to such association and the liability of the indorser, drawer, or guarantor who obtains a loan from or discounts paper with or sells paper under his guaranty to such association and shall include in the case of obligations of a copartnership or association the obligations of the several members thereof and shall include in the case of obligations of a corporation all obligations of all subsidiaries thereof in which such corporation owns or controls a majority interest."

The Comptroller of the Currency has promulgated Rulings interpreting the excessive loan provisions of Section 84 of the National Bank Act. Some of these Rulings are of assistance in reaching an understanding of the Michigan statute (Section 74). In the Comptroller's Manual for National Banks, as amended as of June 30, 1964, the following construction has been placed by the Comptroller of the Currency on Section 84 of the National Bank Act:

"Lending Limits
Law — 12 U.S.C. 84

"Par. 1100. (a) 'The total obligations to any national banking association of any person, copartnership, association, or corporation shall at no time exceed 10 per centum of the amount of the capital stock of such association actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund. The term "obligations" shall mean the direct liability of the maker or acceptor of paper discounted with or sold to such association and the liability of the endorser, drawer, or guarantor who obtains a loan from or discounts paper with or sells paper under his guaranty to such association and shall include in the case of obligations of a copartnership or association the obligations of the several members thereof and shall include in the case of obligations of a corporation all obligations of all subsidiaries thereof in which such corporation owns or controls a majority interest. * * *' " *Reproduced at Paragraph 59,691 CCH of the Federal Banking Law Reports*

"Loans to Corporations and Their Subsidiaries
Law — 12 U.S.C. 84

[2] 12 U.S.C.A. & 1964 Cum. Ann. Pocket Part § 84.

"Par. 1310. (a) 'The term "obligations" * * * shall include in the case of obligations of a corporation all obligations of all subsidiaries thereof in which such corporation owns or controls a majority interest.'

"(b) Where a corporation is indebted to the bank, its obligations must be combined with the obligations of all subsidiaries in which it owns or controls a majority interest. With this exception, however, separate loans to separate corporations are generally not combined in applying the lending limits.

"Examples:

"1. Where a parent corporation is not indebted to the bank loans to two or more of its subsidiaries are not combined.

"2. Loans to one corporation, half (or less) owned by each of two parent corporations, are not combined with the obligations of either of the parents.

"3. The obligations of two corporations owned by the same individual or group are not combined although the loans were based not upon the financial net worth of either but upon collateral or other repayment arrangements satisfactory to the bank as a credit matter." *Reproduced at Paragraph 59,711 CCH of the Federal Banking Law Reports*

"Loans to Members of a Partnership or Association
Law — 12 U.S.C. 84

"Par. 1320 (a) 'The term "obligation" * * * shall include in the case of obligations of a copartnership or association the obligations of the several members thereof * * *.'

"(b) Where the partnership or association is indebted to the bank and the participants in the partnership or association individually borrow funds which are used in the conduct of the enterprise, the loans to such persons and the loans to the partnership or association must be considered as a single credit for the purposes of the partnership or association lending limit. Individual loans to such persons for purposes other than the business of the partnership or association are not required to be combined in determining that limit." *Reproduced at Paragraph 59,712 CCH of the Federal Banking Law Reports*

Your first stated question is:

"1. Where the parent corporation is not directly indebted to a bank but is liable as endorser on loans of its wholly owned subsidiaries, should the loans to the subsidiaries be combined in determining the 10-20% limitations under this section?"

You have supplemented your first question with the additional information that it appears in the situation about which you inquire that the bank is relying primarily on the endorsement of the parent corporation for its protection on the indebtedness owing by the subsidiary companies. You further state that the subsidiaries are "dangerously undercapitalized in relation to the extremely heavy debt position" and "there appears to be

little basis for unsecured credit based on the financial statements submitted." You add that the parent company is engaged in the same type of business as are its subsidiary companies.

Since the parent corporation is not directly indebted, its liability to the bank depends upon its endorsement on the loans made to its wholly-owned subsidiaries. Under the facts presented by you, it would appear that the parent corporation was not a mere accommodation endorser but received a benefit through the loans to its subsidiaries which it owned outright. I answer your first question by saying that under the factual situation disclosed by you, you would be justified in combining the loans to the subsidiaries for the purpose of determining compliance or noncompliance with the statutory limitation.

The second question asked by you is:

> "2. Where corporation 'B' is directly indebted to a bank and loans have been made to one or more separate corporations (which are not owned wholly or in part by corporation 'B', but are composed of the same principals and others) with retirement of the separate corporations' indebtedness dependent upon leasehold payments by corporation 'B' or any *one* of the other corporations, should the loans be combined in determining the 10-20% limitations under this section?"

I assume the statement in your question that the separate corporations are composed of the same principals and others means that the stockholders and officers are to some extent at least the same in each of the separate corporations. Based on this interpretation of the factual situation, it appears that there is no voting control by corporation "B" over any of the separate corporations by virtue of ownership of the stock of the separate corporations. You present no evidence of corporation "B" being an endorser or otherwise guaranteeing the payment of the indebtedness of the separate corporations; but, instead, it appears that the common tie between corporation "B" and the separate corporations comes from a collateral security agreement under which the retirement of the separate corporation's indebtedness depends on leasehold payments being made by corporation "B" or by any one of the other corporations.

On the basis of the facts submitted by you there does not appear to be adequate grounds for combining the loans of these separate borrowers in determining whether or not the statutory loan limitation has been exceeded. The leasehold agreement to which you refer appears to be no more than a method for securing repayment. Should the leasehold payment not be made for any reason it does not appear that the borrowing corporation would thereby be relieved from repayment of the loans to the bank. I think the applicable rule has been stated by the Comptroller of the Currency in the third example under Paragraph 1310 of the Comptroller's Rulings quoted above.

Your third question is:

> "3. Where a corporation and its subsidiary corporations are directly indebted, and a partnership composed of the same principals is indebted, all to the same bank, and repayment of the total indebted-

ness is to come from the parent corporation (the operating company), should all the loans be combined in determining the 10-20% limitations under this section?"

You have supplied additional information concerning the facts which gave rise to your third question. It now appears that loans have been made by the bank to the parent corporation which is an operating company and to its subsidiary corporation which is an equipment company. The stock of the parent company is closely held by members of the same family and these individuals have formed a partnership to which a loan has also been made. The members of the partnership both as individuals and as partners have guaranteed the loan of the operating company and the operating company in turn has guaranteed the loan of the equipment company.

The fundamental purpose of Section 74 of the Michigan Financial Institutions Act and of its counterpart found in Section 84 of the National Bank Act is not to prevent the bank from recovering the money loaned or to afford the borrower a defense to recovery but to announce a rule for the government of the bank.[3]

Based upon the facts contained in your stated question and the additional information furnished by you, it appears that there is a liability to the bank by the parent corporation for the loan made to it, a liability by the subsidiary corporation for a separate loan made to it and a liability by the partnership which also has obtained a loan. Assuming the operating company owns or controls a majority interest in the equipment company, then further liability has been created by the parent corporation because of its guarantee of the loan of its subsidiary. Assuming, also, that the partners are stockholders of the operating company, further liability has been created by the members of the partnership, both individually and as partners, by virtue of their guarantees of the loan of the parent company. It thus appears that the individual partners are liable on the loan to the partnership and on their guarantee of the loan to the parent corporation. In turn the parent corporation is liable on the loan to it and on its guarantee on the loan to its subsidiary. The result is that only the subsidiary corporation is responsible solely for its separate loan without a further liability because of having signed a guarantee. Your factual recital does not precisely state that the parent corporation owns or controls a majority interest in its subsidiary but I assume that this is true because of the closely held stock and the family control of the entire enterprise consisting of the operating company (parent), the equipment company (subsidiary) and the partnership. If my assumption is correct that the parent corporation owns or controls a majority interest of the subsidiary, then the obligations of the parent corporation and the subsidiary are to be combined as required by Section 74, supra, in determining if the lending limitation imposed on the bank has been exceeded. Likewise, under the provisions of Section 74, the liability of the parent corporation may be combined with that of the partnership

[3] *The Union Gold Mining Company of Colorado v. The Rocky Mountain National Bank of Central City, Colorado,* 96 U.S. 640, 24 L. ed. 648; *Schneider v. Thompson,* 58 F. (2d) 94, where the citations of numerous cases are collected. Cf. 10 *Am. Jur.* 2d, *Banks,* § 684; 125 A.L.R. 1512.

because of the guarantee by the stockholder-partners of the parent corporation's loan.

You state in your third question that "repayment of the total indebtedness is to come from the parent corporation." If that fact can be established, it would of itself be justification for combining all of the loans because it would represent a line of credit extended by the bank. But, irrespective of that fact, it is my opinion you would be justified in combining the several loans for the purpose of determining whether or not the statutory limitation has been exceeded because of the cross guarantees which have been made as hereinbefore recited. It appears obvious when the transactions are viewed in their entirety that the bank has not extended credit solely to the parent corporation, solely to the subsidiary corporation and solely to the partnership. All three of these entities are involved as well as the members of the partnership, both in the partnership capacity and individually. The purpose of the statute is to govern the conduct of the bank and when the indebtedness is analyzed both from the standpoint of borrower and guarantor there can be little doubt that the bank has not extended credit solely on the basis of the three separate loans.

FRANK J. KELLEY,
Attorney General.

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TOWNSHIPS: Fiscal year, budget hearing.
CONSTITUTIONAL LAW: Public hearings on local budgets.

The fiscal year of a regular township ends on the second Tuesday next preceding the annual township meeting.

A township may not change its fiscal year.

Act 43, P.A. 1963, 2nd Ex. Sess., does not provide conforming implementation to Article VII, Section 32 of the Michigan Constitution of 1963.

No. 4392 March 23, 1965.

Hon. John T. Bowman
State Senator
The Capitol
Lansing, Michigan

By letter you have sought my opinion with regard to certain aspects of the fiscal affairs of a township.

Specifically you have asked:

"1. Can a township change its fiscal year?

"2. For what fiscal period are the required budget hearings to be applicable, i.e. the current fiscal period or the next fiscal period following the budget hearings?

"3. If the budget hearings are applicable to the current fiscal period and the township cannot change its fiscal year what is the status of expenditures which have been made in the approximately ninety (90)