

650415.1

APPROPRIATIONS: Conditions on.

COLLEGES AND UNIVERSITIES: Regents of University of Michigan.

CONSTITUTIONAL LAW: Regents of University of Michigan.

Section 13 of Act 259, P.A. 1964, as it relates to the Regents of the University of Michigan, violates Article VIII, Sec. 5 of the Michigan Constitution of 1963.

No. 4420

April 15, 1965.

Dr. Harlan Hatcher, President
University of Michigan
Ann Arbor, Michigan

You have requested the opinion of the Attorney General on the following question:

Does Sec. 13 of Act 259, P.A. 1964, insofar as it applies to the Regents of the University of Michigan, violate Article VIII, Sec. 5 of the Michigan Constitution of 1963?

Article VIII, Sec. 5 of the Michigan Constitution of 1963 provides as follows:

"The regents of the University of Michigan and their successors in office shall constitute a body corporate known as the Regents of the University of Michigan; the trustees of Michigan State University and their successors in office shall constitute a body corporate known as the Board of Trustees of Michigan State University; the governors of Wayne State University and their successors in office shall constitute a body corporate known as the Board of Governors of Wayne State University. Each board shall have general supervision of its institution and the control and direction of all expenditures from the institution's funds. Each board shall, as often as necessary, elect a president of the institution under its supervision. He shall be the principal executive officer of the institution, be ex-officio a member of the board without the right to vote and preside at meetings of the board. The board of each institution shall consist of eight members who shall hold office for terms of eight years and who shall be elected as provided by law. The governor shall fill board vacancies by appointment. Each appointee shall hold office until a successor has been nominated and elected as provided by law." (Emphasis supplied)

The underscored constitutional provision found in Article VIII, Sec. 5, as it applies to the Regents of the University of Michigan, is substantially the same as that found in Article XI, Sections 4 and 5, Michigan Constitution of 1908.

The people reposed similar power in the Board of Trustees of Michigan State University in Article XI, Sec. 8 of the Michigan Constitution of 1908, as amended by the people on April 6, 1959.

Section 13 of Act 259, P.A. 1964, provides as follows:

"In view of the fact that state appropriations have been used for

certain expenses in connection with self-liquidating projects, no contract shall be let for construction as to any self-liquidating project at any of the state supported institutions of higher education without prior approval therefor by the legislature.”

The Attorney General has ruled in opinion No. 2127, O.A.G. 1955-56, Vol. I, page 262, that contracts entered into or to be entered into for self-liquidating projects are not contracts on behalf of the state of Michigan, but are contracts solely and on behalf of the University of Michigan or Michigan State University. Thus, a comparable provision in an appropriation Bill, to-wit, Sec. 13 of Senate Bill No. 1432 before the legislature in 1955, which sought to impose precisely the same restriction found in Sec. 13 of Act 259, P.A. 1964, was held by the Attorney General to violate the Michigan Constitution of 1908.

In a letter dated March 10, 1959, addressed to the attorney for the State Board of Agriculture, the Attorney General found Sec. 11 of Act 224, P.A. 1958 to violate Article XI, Sec. 8 of the Michigan Constitution of 1908. The statutory language in Sec. 11 of Act 224, P.A. 1958 is exactly the same as found in Sec. 13, Act 259, P.A. 1964.

The ruling of the Attorney General in opinion No. 2127, supra, is controlling of the question you ask. The legislature cannot require the Regents of the University of Michigan to obtain its prior approval before it lets contracts for the construction of any self-liquidating project. Such restriction violates Article VIII, Sec. 5 of the Michigan Constitution of 1963.

Therefore, it is the opinion of the Attorney General that Sec. 13 of Act 259, P.A. 1964 violates Article VIII, Sec. 5 of the Michigan Constitution of 1963, as it relates to the Regents of the University of Michigan.

FRANK J. KELLEY,
Attorney General.