

but it was not good tax law. The tax law has no humanity or community spirit in its collection features. It demands its pound of flesh.

“* * *

“In the instances as to which the collector unqualifiedly testified that the taxpayer had property upon which levy could have been made, the liability of the city is established.”⁴

Therefore, please be advised that this office agrees with your opinion that neither a political subdivision nor any officer thereof has the power to compromise or release personal property from a tax claim. As to property tax matters, there is no authorization except that provided by § 56a of the General Property Tax Law.

FRANK J. KELLEY,
Attorney General.

650921.1

CITIES: Income tax ordinances.
STATUTES: Applicability to State.
TAXATION: City income tax.

The State of Michigan is not included within the definition of “employer” as provided in Section 6, Chapter 2 of Act 284, P.A. 1964.

No. 4395

September 21, 1965.

Mr. Glenn S. Allen, Jr.
Controller
Lewis Cass Building
Lansing, Michigan

In your recent letter you note that this office on June 13, 1962, advised the then Controller that the withholding provisions of the Detroit income tax ordinance were inoperative as to the State. We held that the State as an employer would not have to withhold from its employees amounts for the Detroit income tax from the bi-weekly compensation it paid to State employees who worked or resided in the city of Detroit. The essence of our advice was that a city, which is a creature of the State, could not by its own ordinance compel the State to do anything. Subsequently the Michigan legislature, with the approval of the Governor, enacted Act 284, P.A. 1964. Therefore, you ask whether Act 284, P.A. 1964, changes the status of the State to coincide with other employers and require fulfillment by the State of the duties and responsibilities defined therein for employers.

Act 284, P.A. 1964,¹ is known as the city income tax act. Chapter 2 of

⁴ To the same effect see *The People on the Relation of Charles W. Jones v. Wright*, 34 Mich. 370. See also *Cooley on Taxation*, Vol. 3, 4th Ed., § 1254, pp. 2493-2494: “Generally tax officers, or boards of county commissioners, or the like, have no power to compromise a tax, or to release it wholly or in part, unless specially authorized by statute.”

¹ M.S.A. Cur. Mat. § 5.3194(1) et seq.

the act provides for a uniform city income tax ordinance. Section 6 of Chapter 2 defines the term "employer" as follows:

"'Employer' means an individual, partnership, association, corporation, nonprofit organization, governmental body or unit or agency, or any other entity whether or not taxable under this ordinance, that employs 1 or more persons on a salary, bonus, wage, commission or other basis, whether or not the employer is in a business."²

There are various responsibilities and duties placed upon employers under the act. Section 51 of Chapter 2 of the act³ requires the employer to withhold the tax from payments to his employees after giving effect to listed exemptions. The same section also makes the employer a trustee of the withheld funds for the city. An employer who is required to withhold and who fails or refuses to do so is liable for the payment of the amount required to be withheld. The employer's liability is discharged upon payment of the tax by the employee, but the employer is not relieved of penalties and interest assessed because of his failure or refusal to withhold. Under Section 60 of Chapter 2 of the act,⁴ an employer is required to file a return and pay the withheld taxes to the city on or before the last day of the month following the close of each calendar quarter. Finally, in Section 99 of Chapter 2 of the act,⁵ a list of violations is given. Each violation is declared to be a misdemeanor punishable, in addition to the interest and penalties provided under the act, by a fine not exceeding \$500, or imprisonment for a period not exceeding 90 days, or both. The wilful failure of an employer to withhold or pay the tax to the city is a misdemeanor under said section.

It is my opinion that the State of Michigan is not included within the term "employer" as defined in Section 6 of Chapter 2 of Act 284, P.A. 1964.

At issue is the construction to be given to the clause appearing in Section 6 under the definition of "employer" which reads: "governmental body or unit or agency."

The Michigan Supreme Court has laid down the applicable rules of statutory construction.

Three cases must be examined in order to understand the full scope and limitations of the rule. In the first of these cases, *Miller v. Manistee County Board of Road Commissioners*, 297 Mich. 487 (1941), the Michigan Supreme Court quoted the rule from 59 C.J., pp. 1103-04:

"The State and its agencies are not to be considered as within the purview of a statute, however general and comprehensive the language of such act may be, unless an intention to include them is clearly manifest, as where they are expressly named therein, or included by necessary implication. This general doctrine applies with especial force to statutes by which prerogatives, rights, titles, or interests of the State would be divested or diminished; or liabilities imposed upon it; but the State may have the benefit of general laws, and the general rule

² M.S.A. Cur. Mat. § 5.3194(16).

³ M.S.A. Cur. Mat. § 5.3194(61).

⁴ M.S.A. Cur. Mat. § 5.3194(70).

⁵ M.S.A. Cur. Mat. § 5.3194(109).

has been declared not to apply to statutes made *for the public good*, the advancement of religion and justice, *and the prevention of injury and wrong.*'”

In the second case, *City of Detroit v. O'Connor*, 302 Mich. 531 (1942), the Michigan Supreme Court quoted with approval the general rule of statutory construction as stated in the *Miller* case and found it to be applicable.

In the third case to be analyzed, *Mead v. Michigan Public Service Commission*, 303 Mich. 168 (1942), the Supreme Court overruled the *Miller* case with regard to the application of the general rule of statutory construction as it was applied to the motor vehicle code, and stated:

“The prevailing opinion in the *Miller* case read into the motor vehicle law a waiver of sovereign immunity which is not in the statute either expressly or by necessary implication. Such determination was erroneous and should be considered overruled by the holding in the instant case.”

The effect of the *Mead* case, then, was to limit the exceptions to the general rule unless an intention to include the State is clearly manifest.

Applying these rules of statutory construction to Act 284, P.A. 1964, it is my opinion that the intention to include the State of Michigan within the definition of “employer” in the act is not clearly manifest.

The statutory terms “governmental unit” or “governmental agency” can be discarded because by their very nature they represent something less than the sovereign. This leaves only the statutory term “governmental body.”

There is no court authority that holds the term “governmental body” to have a common understood meaning which includes the sovereign. At best the State can be included within the statutory language by implication only, and it is my opinion that the intention of the legislature to include the State is not clearly manifest.

The term “governmental body” is used by the People in Article VII, Section 28, Michigan Constitution of 1963. From a reading of this provision, it is quite clear that the State was not included within such term by the People. The legislature in using the precise term in Act 284, P.A. 1964, did not use the term so as to include the State within its purview.

Since the expression “governmental body” can have meaning *within* the political subdivision of the State, it is an equally persuasive construction to find that the legislature intended to exclude the State.

This construction is supported by considering other actions taken by the Michigan legislature in the 1964 session. At the same session the legislature adopted Act 154, P.A. 1964, the minimum wage law of 1964,⁶ and in Section 2 thereof defined the statutory term “employer” to include “the State and its political subdivisions, agencies and instrumentalities.” The legislature in the framing and passage of Act 284, P.A. 1964, and Act 154, P.A. 1964, had full knowledge of the provisions appearing in each act. *Reichert v. Peoples State Bank for Savings*, 265 Mich. 668 (1934).

⁶ M.S.A. Cur. Mat. § 17.255(1) et seq.

In view of the criminal penalties and civil sanctions imposed by Act 284, P.A. 1964, I am unwilling to subject the State of Michigan thereto in the absence of a clear mandate from the legislature.

The conclusion must follow that the intention of the legislature to include the State within Section 6 of Chapter 2 of Act 284, P.A. 1964, is not clearly manifest.⁷

Because of the foregoing reasons, it is my opinion that the State of Michigan is not included within the definition of the term "employer," as stated in Section 6 of Chapter 2 of Act 284, P.A. 1964.

FRANK J. KELLEY,
Attorney General.

650922-1

RETIREMENT SYSTEMS: State Police – Breach of Public Trust.
POLICE, STATE: Return of Pension Contributions – Breach of Public Trust.

Whether or not three described cases of misconduct constitute a "breach of the public trust" preventing a return of pension contributions, pursuant to § 3, Act 251, P.A. 1935, as amended, discussed and decided.

No. 4472

September 22, 1965.

Mr. Frederick E. Davids
Commissioner, Michigan State Police
East Lansing, Michigan

The Michigan department of public safety pension, accident and disability fund was created by Act 251, P.A. 1935 (C.L. 1948 § 28.101, et seq.; M.S.A. 1961 Rev. Vol. § 3.331, et seq.). Section 2 of the act places responsibility for administration of the fund in the Commissioner of the Michigan Department of Public Safety under the supervision of the State Administrative Board. Section 3 of the act defines membership and specifies the amount of contributions of members to be deducted from salary and paid to the State Treasury to the credit of the fund.

Section 3 of the act was amended by Act 91, P.A. 1958, which added the following:

"Any member of the public safety pension, accident and disability fund who resigns or is dismissed for reasons other than breach of the public trust from the Michigan department of public safety shall receive in a lump sum, payable to him or his legal representative, 100% of the contributions contributed by him into the fund."

⁷ See, also, for example: Sections 461 and 511 of Act 40, P.A. 1956, being C.L.S. 1961 §§ 280.461 and 280.511; M.S.A. 1960 Rev. Vol. §§ 11:461 and 11.1511, which expressly include the State of Michigan; and Section 1 of Act 167, P.A. 1933, as last amended by Act 214, P.A. 1964, M.S.A. Cur. Mat. § 7.521, in which the State of Michigan is expressly included within the definition of the term "person" in the Sales Tax Act.