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EXECUTIVE ORGANIZATION:
MICHIGAN EMPLOYMENT SECURITY COMMISSION: Appointing authority.

Under the Executive organization act of 1965, the Michigan Employment Security Commission is an autonomous entity in the Department of Labor and retains its functions as the appointing authority over employees of the Commission.

No. 4491 January 3, 1966.

Mr. Malcolm R. Lovell, Jr., Director
Michigan Employment Security Commission
7310 Woodward Avenue
Detroit, Michigan

You request my opinion in response to a question which may be stated as follows:

> Under the Executive organization act of 1965 does the Michigan Employment Security Commission possess appointing authority over employees or is such authority vested in the head of the Department of Labor created by that act?

The Executive organization act of 1965 is Act 380, P.A. 1965, (M.S.A. Cur. Mat. § 3.29(1) et seq.), effective July 23, 1965, as amended by Act 407, P.A. 1965, (M.S.A. Cur. Mat. § 3.29(8) et seq.), effective October 29, 1965. The Department of Labor is created by Section 375 of Act 380, supra. The Michigan Employment Security Commission is transferred to the Department of Labor by Subsection (a) of Section 379 of Act 380. Subsection (a) in its entirety reads as follows:

> "The Michigan employment security commission created by section 3 of Act No. 1 of the Extra Session of 1936, as amended, being section 421.3 of the Compiled Laws of 1948, with all its statutory authority, powers, duties and functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds, including the functions of budgeting and procurement and management related functions are transferred to and shall be an autonomous entity in the department of labor."

It is important to note that under the above-quoted language the Michigan Employment Security Commission is transferred as an autonomous entity in the Department of Labor.

Act 380, P.A. 1965, as amended by Act 407, P.A. 1965, was enacted by the legislature in implementation of Article V, Section 2, Constitution of 1963. This legislation creates 19 principal departments in the executive branch of the state government and undertakes to organize the executive and administrative agencies of state government within the 19 principal departments. Under Act 380, P.A. 1965, as amended, the organization of the executive and administrative agencies of state government is accomplished by three basic methods:

1. By the transfer of an existing department, board, office, commis-

sion or agency intact to a principal department to be administered under the supervision of the principal department and with all budgeting, procurement and related management functions to be performed under the direction and supervision of the head of the principal department but with the authority to exercise independently of the head of the department its prescribed statutory powers, duties and functions of rule-making, licensing and registration including the prescription of rules, rates, regulations and standards, and adjudication, designated under Section 3(a) of the act as a type I transfer.

2. By the transfer of an existing department, board, commission or agency to a principal department with all of its statutory authority, powers, duties and functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds, including the functions of budgeting and procurement, transferred to the principal department, designated under Section 3(b) of the act as a type II transfer.

3. By the transfer of all the statutory authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds, of an existing department, board, commission, or agency to a principal department with the abolishing of such transferred department, board, commission or agency, designated under Section 3(c) of the act as a type III transfer.

In transferrring the Michigan Employment Security Commission to the Department of Labor by Section 379 (a) of the act it is obvious from the language used that the legislature did not employ any of the three basic transfer types. Instead, the legislature directed that the Michigan Employment Security Commission shall be an autonomous entity in the Department of Labor. The term "autonomous entity" is not defined or described in Act 380 as amended. It is therefore appropriate to turn to reported court decisions for guidance in seeking the legislative intent. No case has been found in which this term has been considered by a court. However, in the case of *Green et al. v. Obergfell et al.* (1941), 121 F. 2d 46, the United States Court of Appeals for the District of Columbia discussed the meaning of the word "autonomy." The Court said (page 57):

> "This word has never been defined by an American court, so far as can be determined from the dictionaries and other work books. Webster defines it as meaning the power or right of self-government. Black's definition reads: 'The political independence of a nation; the right (and condition) of self-government; the negation of a state of political influence from without or from foreign powers.' "

In the case of *In re Burk* (1918), 66 Ind. App. 435, 118 N.E. 540, the Appellate Court of Indiana passed upon the meaning of the word "entity." In its opinion (page 542) the Court said:

> " 'Entity' means a real being; existence. International Dictionary. 'Legal entity' therefore means legal existence. The Industrial Board of Indiana is a creature of the statute. Under the statute its existence is perpetual, although its membership may change, and under the Workmen's Compensation Act it is charged with important duties. It is an organized body with a chairman and a secretary. * * * It

therefore has a legal existence. In our opinion, it is such a legal entity as may be expressly authorized by statute to sue."

The Supreme Court of Nebraska has likewise given definitional meaning to the word "entity." In the case of *Department of Banking v. Hedges et al.* (1939), 136 Neb. 382, 286 N.W. 277, 281, the Court stated:

> "The word 'entity' means a real being, existence. 'Legal entity,' therefore, means legal existence. The department of banking is a creature of statute. Under the statute its existence is perpetual, although its membership may change, and under the act it is charged with important duties. It has a superintendent of banking and other assistants, as shown by the act. It, therefore, has a legal existence."

Further enlightenment comes from the definition of "autonomous" appearing in Webster's Third New International Dictionary, Unabridged, 1963 Edition, where the word is described as an adjective and the following meaning given: "living under one's own laws, independent. * * * undertaken or carried on without outside control: self-contained [an autonomous school system] * * *."

Consideration of the foregoing authorities indicates that the intention of the legislature in providing by Section 379 (a) of Act 380 P.A. 1965, as amended, that the Michigan Employment Security Commission shall be an autonomous entity in the Department of Labor, was to establish the Commission in the principal department as possessing an independent legal existence authorizing it to exercise its statutory authority, powers, duties and functions free from the direction and supervision of the head of the principal department.

The language of Section 379 (a) of Act 380, as amended, if taken literally, does not convey any precise meaning. If the sentence is read exactly as written, it in effect says that the Michigan Employment Security Commission with all of its statutory powers, duties and functions, etc. are transferred to and shall be an autonomous entity in the Department of Labor. The reader is at once confronted with a problem of grammatical construction. Does the sentence mean that the powers, duties and functions are transferred to the autonomous entity or are transferred to the Department of Labor? If the enumerated powers, duties and functions are transferred to the Department of Labor, then it is obvious that the Michigan Employment Security Commission cannot be an autonomous entity because it has retained nothing over which it has independent authority to be exercised free from outside control. It would in such a situation become an empty shell. I cannot subscribe to such a result as being expressive of the legislative intent.[1] In my judgment the language

[1] In writing for our Supreme Court in 1873 in the case of *The People on the relation of Benjamin Whipple v. The Judge of the Saginaw Circuit Court,* 26 Mich. 341, Chief Justice Christiancy said: "But the primary object of all interpretation or construction of statutes is, to ascertain the real intention of the legislature; and no specific or artificial rules of interpretation can be of any value, which do not contribute to this end. Legislatures are not grammar schools, and in this country, at least, it is hardly reasonable to expect legislative acts to be drawn with strict grammatical or logical accuracy." (page 344)

of Section 379 (a) must be construed as continuing in the Michigan Employment Security Commission all of its statutory powers, duties and functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds, including the functions of budgeting and procurement and management related functions to be exercised by the Commission as an autonomous entity.

It is an established rule of statutory construction that the literal import of words is not to be followed if to do so would pervert the intention of the legislature in enacting the statute. The rule was announced by our Supreme Court in the case of *Heckathorn v. Heckathorn,* 284 Mich. 677, 681, to be:

> "If the general meaning and object of the statute be found inconsistent with the literal import of any particular clause or section, such clause or section must, if possible, be construed according to that purpose. The mere literal construction ought not to prevail if it is opposed to the intention of the legislature apparent from the statute; and if the words are sufficiently flexible to admit of some other construction by which that intention can be better effected, the law requires that construction to be adopted."[2]

The Supreme Court in the *City of Grand Rapids v. Crocker,* 219 Mich. 178, 183, quoted with approval from the text *Endlich* on the Interpretation of Statutes the following correlative rule also applicable here:

> "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it, which modifies the meaning of the words, and even the structure of the sentence. This is done, sometimes, by giving an unusual meaning to particular words; sometimes by altering their collocation; or by rejecting them altogether; or by interpolating other words; under the influence, no doubt, of an irresistible conviction that the legislature could not possibly have intended what its words signify, and that the modifications thus made are mere corrections of careless language, and really give the true intention."[3]

Application of the foregoing legal principles convinces me that the language of foregoing Section 379 (a) confers upon the Michigan Employment Security Commission the status of an autonomous entity possessed of the statutorily recited authority, powers, duties and functions independent of the head of the department.

Having reached the foregoing conclusion as to the status of the Commission, resolution of your question may be quickly made. Under Section 379 (a), supra, personnel, budgeting and procurement and management

[2] The foregoing rule has been reiterated by our Court with approval in a number of subsequent decisions. See for example *L. A. Darling Company v. Water Resources Commission,* 341 Mich. 654, 662.

[3] This rule was reaffirmed in the case of *Wayne County Board of Road Commissioners v. Wayne County Clerk,* 293 Mich. 229, 236.

related functions remain with the Michigan Employment Security Commission. In fulfillment of these functions the Commission must necessarily retain its duties and responsibilities as the appointing authority over employees of the Commission. This conclusion negates any such authority in the head of the Department of Labor over these employees.

The rules of the Civil Service Commission have been examined and nothing is found therein defining the term "appointing authority" nor is there any provision in the rules of the Civil Service Commission for the determination or selection of an appointing authority. Under date of December 14, 1964 Franklin K. DeWald, State Personnel Director of the Civil Service Commission, issued a four page communication addressed to all state employees on the subject of State Employee Relations Policy. This policy statement contained the following definition:

> "*Appointing Authority:* Single executives heading principal departments or the chief executive officer of each principal department headed by a board or commission, or those officials delegated by them as being responsible to administer the personnel functions of the department, board or commission."

Also set forth in that communication is a section outlining the rights, duties and responsibilities of appointing authorities. I do not consider this action by the State Personnel Director as relevant to the situation under consideration here.

FRANK J. KELLEY,
Attorney General.

660111.1

WATER RESOURCES: Inland Lake Levels – Flood Control.

Act 146, P.A. 1961, as amended, authorizes establishment and regulation of inland lake levels to prevent flooding and flood damage.

County boards of supervisors may contract with the federal government for the construction of flood control works under the provisions of Act 146, P.A. 1961, as amended.

No. 4465 January 11, 1966.

Mr. Loring F. Oeming
Executive Secretary
Water Resources Commission
200 Mill Street
Lansing, Michigan

By letter you indicate to this office that the boards of supervisors of Cheboygan and Presque Isle counties, pursuant to provisions of the inland lake level act of 1961, as amended,[1] have joined together in efforts to establish a legal normal level for the waters of Black Lake and to cause necessary works to be constructed for the maintenance of said level.

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[1] Act 146, P.A. 1961, as amended by Acts 25 and 203, P.A. 1962 and Act 33, P.A. 1964, being M.S.A. 1963 Cum. Supp. and Curr. Material Sec. 11.300(1) et seq.