ascertained in accordance with Section 1 of Act 207 P.A. 1965 which is free from any ambiguity and requires no interpretation by me.

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EXECUTIVE BRANCH: Organization of Principal Departments.

Type I transfer of existing boards, offices, commissions and agencies to a principal department established by Act No. 380, Public Acts of 1965, the Executive Organization Act of 1965, discussed and construed.

No. 4479

March 9, 1966.

Hon. George Romney
Governor
Capitol
Lansing, Michigan

You have requested my opinion as to the proper interpretation to be placed on a Type I transfer and on a Type II transfer as those designations appear in Act 380, Public Acts of 1965, as amended. You also request interpretation of Sections 8 (a) and 8 (b) of the basic act as amended. Act 380, P.A. 1965 is known as the Executive organization act of 1965. The Act became effective on July 23, 1965. It was subsequently amended by Act 407, P.A. 1965 which went into effect October 29, 1965. The amendatory act does not change the Type I transfer and therefore will not be given further consideration in answering the first question asked by you.

Due to your expressed desire that my opinion be furnished as expeditiously as possible, I have divided your request and submit herewith my response on the meaning of a Type I transfer. The balance of your request will be answered as soon as the necessary research can be completed and an opinion prepared.

The Type I transfer is described in Section 3(a) of Act 380, supra. Set forth below is the entire content of Section 3(a) of the Act, rearranged to show each sentence separately.

> "Under this act, a type I transfer means the transferring intact of an existing department, board, commission or agency to a principal department established by this act.
>
> "When any board, commission, or other agency is transferred to a principal department under a type I transfer, that board, commission or agency shall be administered under the supervision of that principal department.
>
> "Any board, commission or other agency granted a type I transfer shall exercise its prescribed statutory powers, duties and functions of rule-making, licensing and registration including the prescription of rules, rates, regulations and standards, and adjudication independently of the head of the department.
>
> "Under a type I transfer all budgeting, procurement and related management functions of any transferred board, agency or commis-

sion shall be performed under the direction and supervision of the head of the principal department."

To place the Type I transfer in its proper perspective within the framework of the Act, a brief discussion of the purposes of the Act is necessary. Article V, Section 2, Constitution of 1963, provides in part that, with certain enumerated exceptions, all executive and administrative offices, agencies and instrumentalities of the executive branch of state government and their respective functions, powers and duties shall be allocated by law among and within not more than 20 principal departments. Section 12 of the Schedule and Temporary Provisions of the Constitution prescribes that the initial allocation by law pursuant to Article V, Section 2, shall be completed within two years after the effective date of the Constitution but if not completed within such period the governor, within one year thereafter, by executive order, shall make the initial allocation.

By Act 380, Public Acts of 1965, the legislature has created 19 principal departments as listed in Section 4 thereof. Chapters 2 through 20 of the Act contain the allocation by the legislature of existing boards, offices, commissions and agencies within the 19 principal departments. To accomplish this allocation, the legislature has used primarily four basic types of transfer but in miscellaneous instances has prescribed transfers in a form not within the framework of any of the basic types:

Basic Type Transfers

1. All statutory powers, duties and functions are to be retained and the transferred agency shall remain as an autonomous entity. (See Section 379 (a) (b) (c))

2. Type I transfer

   (a) a board, office, commission or agency is transferred intact to a principal department and shall exercise its powers, duties and functions in the manner prescribed in Section 3 (a) of the Act.

   (b) a portion of the powers, duties and functions of a board, office, commission or agency are transferred to a principal department with another portion being transferred to some other principal department.

   (c) sometimes the powers, duties and functions now vested in a director or commissioner within a department are also transferred. (See Sections 178, 253, 353, 403)

3. Type II transfer

   (a) an existing department, board, commission or agency is transferred to a principal department and shall thereafter exercise only those duties within the department which are delegated to it by the department head.

   (b) some portion of the powers, duties and functions of a board, office, commission or agency are transferred to a principal department thereafter to be exercised under the authority of the department head.

4. Type III transfer

   The powers, duties and functions of a state office, board, commis-

sion or agency are transferred to a principal department and the office, board, commission or agency is abolished.

Miscellaneous Type Transfers

Instead of resorting to use of one of the Basic Type Transfers outlined above, the legislature in some instances has transferred a board, agency or organization by specifically spelling out in the Act the nature of the transfer and the extent thereof. (see, for example, Sections 12, 106, 107 and 108)

Section 3 (a) quoted above sets forth the terms and conditions of a Type I transfer. Because of the manner in which the Act is structured, little or no enlightenment as to the legislative intent regarding the extent of a Type I transfer can be gained from the language in any other section of the Act. As will hereafter be demonstrated, the provisions of Section 3 (a) are to some extent conflicting and ambiguous, which makes it appropriate to resort to rules of statutory construction to ascertain the legislative intent.

When the words of a statute are not precise and clear, the construction which is most reasonable and best suited to accomplish the objects of the statute, should be adopted, and a construction leading to an absurd consequence shall be disregarded. *June v. School District No. 11, Southfield Township, Oakland County,* 283 Mich. 533, 543.

Language of doubtful meaning in a statute must be given a reasonable construction, looking to the purpose subserved thereby, its occasion and necessity, to the end that the purpose will be effected. *Lakehead Pipe Line Company, Inc. v. Dehn,* 340 Mich. 25.

In construing an ambiguous statute it is proper to look to the result of the construction as an aid in determining legislative intent. *Magnuson v. Kent County Board of Canvassers,* 370 Mich. 649, 657.

To ascertain the legislative intent, effect must be given, if possible, to every word, sentence and section. *City of Grand Rapids v. Crocker,* 219 Mich. 178, 182, 183; *People v. Babcock,* 343 Mich. 671, 678; *Lee v. Employment Security Commission,* 346 Mich. 171, 178. Under the foregoing rules it is appropriate to examine each sentence of Section 3 (a) to ascertain the legislative intent in its enactment and to ascertain the meaning to be given to a Type I transfer.

The first sentence of Section 3 (a) is as follows:

"Under this act, a type I transfer means the transferring intact of an existing department, board, commission or agency to a principal department established by this act."

There appears to be no ambiguity in this sentence and no doubt exists as to the legislative intent. It announces that a Type I transfer places the pertinent department, board, commission or agency intact within the organizational structure of one of the newly created principal departments to which the transfer is being made.

The second sentence of Section 3 (a) reads as follows:

"When any board, commission, or other agency is transferred to a principal department under a type I transfer, that board, commission

or agency shall be administered under the supervision of that principal department."

The key words of this sentence are that the board, commission or agency "shall be administered under the supervision" of the principal department. It has been said by the Supreme Court of Minnesota in the case of *Christgau v. Fine et al.* (1947), 223 Minn. 452, 27 N.W. 2d 193, 198, that there is no distinction between the power to direct and the power to administer. In that case the Court said:

> "The terms are synonymous. Both mean to manage, control, and conduct the affairs or business of the governmental agency to which they relate."

In the case of *Wisconsin Department of Taxation v. Fred Pabst, Jr., et al.* (1961), 15 Wis. 2d 195, 112 N.W. 2d 161, 164, the Supreme Court of Wisconsin adopted the dictionary meaning of the word "administer" by saying:

> "'Administer' is defined in Webster's Third New International Dictionary as '* * * to manage the affairs of * * * to direct or superintend the execution, use, or conduct of * * * to manage or conduct affairs * * *.'"

The power to supervise is the power to review all the acts of subordinates, and to correct, or direct a correction of, any errors committed by them. "Any less power than this would make the 'supervision' an idle act, — a mere overlooking, without power of correction or suggestion." *Vantongeren v. Heffernan et al.* (1888), Supreme Court of Dakota, 38 N.W. 52, 56.

The same interpretation of the power to supervise was approved by the Supreme Court of the United States in the case of *Knight v. The United Land Association et al.* (1891), 142 U.S. 161, 35 L. ed. 974. See also *Orchard v. Alexander* (1895), 157 U.S. 372, 39 L. ed. 737.

Returning to the meaning of the key words "administered under the supervision" of the principal department and applying the foregoing legal definitions, it would be clear if nothing further appeared in Section 3 (a) that the responsibility for the formulation of departmental policy and for the coordination and execution of departmental functions has been vested in the department head. However, the legislature by the third sentence of Section 3 (a) gave to the transferred board, office, commission or agency some area of independent authority.

The third sentence of Section 3 (a) reads:

> "Any board, commission or other agency granted a type I transfer shall exercise its prescribed statutory powers, duties and functions of rule-making, licensing and registration including the prescription of rules, rates, regulations and standards, and adjudication independently of the head of the department."

A plain reading of the third sentence and its place in the context of Section 3 (a) will disclose that the independent authority there conferred has been carved out of and reserved from the supervisory grant appearing in the second sentence of this section. Thus the question becomes—what is the nature and extent of the independent authority which the third sentence

confers. Initially, that sentence directs that "[a]ny board, commission or other agency" granted a Type I transfer shall exercise "its prescribed statutory powers, duties and functions of rule-making, licensing and registration." I construe the words "statutory powers, duties and functions" as pertaining collectively to rule-making, licensing and registration. Under the legal maxim *noscitur a sociis* words employed in a statute are construed in connection with, and their meaning is ascertained by reference to, the words and phrases with which they are associated or related. See 82 C.J.S., page 654, § 331. Also consult 66 C.J.S., page 607 and *Sanchick v. State Board of Optometry*, 342 Mich. 555. To ascertain whether a board, office, commission or agency has any such "prescribed" statutory powers, duties and functions, it is necessary to examine the pertinent statutes relating to the board, office, commission or agency involved and thereby determine whether or not the powers, duties and functions of rule-making, licensing and registration have theretofore been conferred by the legislature upon the particular board, office, commission or agency concerned by the Type I transfer. If such prescription can be found in the law it may be exercised independently of the head of the department; if no such prescription can be found it has not been supplied by the language of Act 380, supra, and accordingly may not be exercised.

The third sentence next continues with the clause "including the prescription of rules, rates, regulations and standards, and adjudication independently of the head of the department." The word "including" is normally used and understood as a term of enlargement and not one of limitation. Where used as a term of limitation, it is construed to mean "including only." *Penn Dairies, Inc. v. Milk Control Commission* (1942), Supreme Court of Pennsylvania, 344 Pa. 35, 26 A. 2d 431. Where construed as a term of enlargement, the word implies that something has been given beyond the general language which precedes it. *Arnold et al. v. Arnold* (1951), Supreme Court of Oregon, 237 P. 2d 963. *Phelps Dodge Corporation v. National Labor Relations Board* (1941), 313 U.S. 177, 85 L. ed. 1271, 1280.

Our own Supreme Court in construing the words "including" or "include" has looked to the language of the statute and to the situation to which the statute is intended to apply. So in the case of *Wyoming Park Lumber & Fuel Co. v. Vander Ark.*, 291 Mich. 496, it was held that the word "including" was expansive rather than qualifying. But in *Davidson v. Secretary of State*, 351 Mich. 4, the Court held that the items of equipment named following the word "including" were within the preceding definition of special mobile equipment. In the later case of *Skillman v. Abruzzo*, 352 Mich. 29, the word "include" was construed to be a term of enlargement where used in a definition of county employee.

In my opinion the legislature intended the participial phrase introduced by the word "including" to be expansive of the antecedent enumeration appearing in the sentence. The content of the phrase requires this result. The prescription of rates, regulations and standards is not synonymous with rule-making, licensing and registration. Section 1(2) of Act 88 P.A. 1943, as amended, (C.L. 1948 § 24.71, M.S.A. 1961 Rev. Vol. § 3.560(7)) specifically excepts from the definition of "rule" a rule, regulation or order which establishes or fixes rates or tariffs.

The word "adjudication" appearing in the participial phrase, as customarily used and understood in administrative law, embraces the exercise of powers, duties and functions wholly apart from rule-making, licensing and registration. In the case of *Philadelphia Co. v. Securities and Exchange Commission* (1948), 175 F. 2d 808, the United States Court of Appeals said (page 816):

> "It is elementary that the action of an administrative tribunal is adjudicatory in character if it is particular and immediate, rather than, as in the case of legislative or rule making action, general and future in effect."[1]

To like effect see *Prentis v. Atlantic Coast Line Company* (1908), 211 U.S. 210, 53 L. ed. 150, 158. The Supreme Court of Washington in the case of *Senior Citizens League, Inc. v. Department of Social Security of Washington, et al.* (1951), 228 P. 2d 478, 492, made this comment:

> "'Rule-making' is legislation on the administrative level, i.e., legislation within the confines of the granting statute, as required by the constitution and its doctrine of nondelegability and separability of powers. (citation omitted) It is the function of laying down general regulations as distinguished from orders that apply to named persons or to specific situations, the latter being adjudicatory in nature."

Also see *City of Newton v. Department of Public Utilities* (1959), Supreme Judicial Court of Massachusetts, 160 N.E. 2d 108. C.F. *1 Am. Jur. 2d, Administrative Law*, § 138, et seq.

The foregoing analysis clearly demonstrates that at least three distinct and separate powers, duties and functions are involved by the provisions of the third sentence of Section 3 (a). These are rule-making, a quasi legislative function,[2] the regulatory, administrative and ministerial functions as they relate to the enumerated categories,[3] and the adjudicatory or quasi judicial function.[4]

The fourth sentence of Section 3 (a) reads:

> "Under a type 1 transfer all budgeting, procurement and related management functions of any transferred board, agency or commission shall be performed under the direction and supervision of the head of the principal department."

The budgeting, procurement and related management functions may be described collectively as the housekeeping functions which are placed under the direction and supervision of the head of the principal department. The "direction and supervision" conferred by the fourth sentence is not

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[1] The judgment of the Court of Appeals was vacated by the Supreme Court of the United States on the ground that the issues had become moot. 337 U.S. 901, 93 L. ed. 1715.

[2] See Act 88 P.A. 1943, as amended; C.L. 1948 & C.L.S. 1961 § 24.71 et seq.; M.S.A. 1961 Rev. Vol. & Cum. Supp. § 3.560(7) et seq., O.A.G. 1958, Vol. 2, p. 246 at p. 253.

[3] *1 Am. Jur. 2d, Administrative Law*, § 81.

[4] *Detroit Edison Company v. Corporation & Securities Commission*, 361 Mich. 150.

substantially different from the authority conferred in the second sentence by the words "administered under the supervision" of the principal department. The power to direct and the power to administer have been held to be synonymous terms. See the case of *Christgau v. Fine et al.*, supra.

By way of summary, a Type I transfer under the Executive organization act of 1965 places the board, office, commission or agency intact within the principal department to which it has been transferred. Under the Act each board, office, commission or agency having a Type I transfer is subject to having its policy determinations and its functions administered under the supervision of the principal department head except those policy determinations and functions which may be exercised independently within the authority of the third sentence of Section 3 (a) of the Act. The statutory powers, duties and functions which may be exercised independently of the department head pursuant to the legislative directive of the third sentence of Section 3 (a) of the Act are retained and may be performed by the transferred agency without interference or supervision by the head of the department. This is but to say that within these categorical areas, the Type I agency acts independently of the department head and it necessarily follows that the head of the department is freed from responsibility for such independent action.

In the exercise of the independent authority which a Type I agency may exercise, it is appropriate to warn that the powers, duties and functions to be so exercised must be found in the basic statutes by which the board, office, commission or agency so transferred was created and empowered because it is clear that as to the Type I transfer neither Act 380, nor amendatory Act 407, supra, confers any new power, duty or function for independent action not theretofore possessed. In this connection correlative questions may arise as to the power to issue bonds, as to the obligations under outstanding bonds, as to qualification for federal funds, and the like, which cannot be resolved by application of the general rules of construction and the interpretation of the several sentences of Section 3 (a) of the Act which I have outlined above. When situations of this nature appear it will be necessary to examine the pertinent statutes to decide as to each such situation whether or not the specific power, duty or function is to be performed by the transferred board, office, commission or agency by independent action or is to be performed under the supervision of the department head.

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