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EXECUTIVE ORGANIZATION: Mackinac and International Bridge Authorities – Michigan Department of State Highways.

CIVIL SERVICE COMMISSION: Employees of Mackinac and International Bridge Authorities.

The Mackinac and International Bridge Authorities, by the Type I transfer to the Michigan Department of State Highways, have lost their plenary status.

Employees of the bridge authorities shall be in the classified State Civil Service with the Director of the Michigan Department of State Highways as the appointing authority.

The bridges under the jurisdiction and control of the bridge authorities shall be maintained under the direction and supervision of the Michigan Department of State Highways.

Budgeting for the bridge authorities shall be done under the direction and supervision of the head of the Michigan Department of State Highways.

Regulations and the rates of tolls for the operation and use of the bridges shall be prescribed by the bridge authorities independently of the Michigan Department of State Highways.

All functions performed by the bridge authorities and the Michigan Department of State Highways shall be consistent with the provisions of existing trust indentures securing outstanding bond issues.

No. 4468

May 24, 1966.

Mr. Frederick E. Tripp
Director for Administration
Michigan Department of State Highways
Stevens T. Mason Building
Lansing, Michigan 48926

Dear Mr. Tripp:

You ask four questions relative to "Type I Transfers" under the "Executive Organization Act," Act 380, P.A. 1965, [M.S.A. 1965 Cum. Supp., § 3.29(i), et seq.], of the Mackinac and International Bridge Authorities, to the Michigan Department of State Highways, the first of which questions is stated as follows:

"Under the Executive Organization Act of 1965, and Article XI, Section 5, of the Constitution, will positions in the Mackinac Bridge Authority, upon the transfer of the agency to the Highway Department, become positions in the State Classified Service, with the Highway Department as the appointing authority and subject to the rules of Civil Service or shall they continue to be exempt positions under the sole direction of the Authority as at present?"

The International and Mackinac Bridge Authorities were established by the legislature, respectively, pursuant to Act No. 237, P.A. 1935, [C.L. 1948, § 254.202; M.S.A. 1958 Rev. Vol., § 9.1312], and Act No. 21, P.A.

Ex. Sess. 1950, [C.L.S. 1952, § 254.301, et seq.; M.S.A. 1958 Rev. Vol. § 9.1360(1), et seq.].

With respect to employment of personnel, the following provisions of law are applicable:

As regards the International Bridge Authority, section 3 (n) of Act 99, P.A. 1954 [C.L.S. 1954, § 254.221, et seq.; M.S.A. 1958 Rev. Vol. § 9.1331(1), et seq.], empowers the authority:

“To employ consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers and such other employees and agents as may be necessary in its judgment and to fix their compensation;”

As regards the Mackinac Bridge Authority, section 2 of Act 21, P.A. (Ex. Sess.) 1950, *supra*, reads similarly, and provides in part that the authority:

“. . . shall have authority to employ such engineers and construction experts, inspectors, and other personnel as in its judgment is advisable and to determine the compensation of such employees. . . .”

In opinion of August 13, 1956 (O.A.G. 1955-56, Vol. II, No. 2463, p. 461), the then Attorney General Thomas M. Kavanagh held, on the basis of *City of Dearborn vs. Michigan Turnpike Authority*, 344 Mich. 37, that the Mackinac Bridge Authority is an autonomous entity, existing separately from the state although created by the legislature to act as an agency of the state, and by virtue of that fact, its employees are not in the state service, and, hence, not subject to Michigan Civil Service Commission requirements.

The provisions of the “Turnpike Act,”¹ which was the subject of decision in the *City of Dearborn* case, *supra*, were compared with the provisions of the act governing the Mackinac Bridge Authority, *supra*, and it was determined that both acts were nearly identical, and thus, the Mackinac Bridge Authority, is, in essence, the same type of legal entity as the Turnpike Authority. The same may be said with respect to the International Bridge Authority.

The legislature by Act No. 380, P.A. 1965, established nineteen (19) principal departments, which are listed in section 4 thereof. The Michigan Department of State Highways is one of those principal departments. Chapter 15, sections 350 through 358 of the act, pertain thereto. Sections 357 and 358 transfer the Mackinac Bridge Authority and the International Bridge Authority, respectively, to the Michigan Department of State Highways.

Section 3 (a) of the Executive Organization Act defines and describes a type I transfer as follows:

“Sec. 3. (a) 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,

¹ Act 176, P.A. 1953 (C.L.S. 1954, § 252.101, et seq.; M.S.A. 1958 Rev. Vol., § 9.1095[1], et seq.) repealed by Act 13, P.A. 1962.

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

In Opinion No. 4479, dated March 9, 1966, I discussed and construed the type I transfer of existing boards, offices, commissions and agencies to a principal department:

"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 free from responsibility for such independent action."

The first sentence of section 3 (a) of the Executive organization act reads:

"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."

Without further reference to other parts of the act, it would appear that this language would have the effect of preserving the plenary status of the bridge authorities.

However, it is significant that the transfer of the Michigan Employment Security Commission, the Michigan Employment Security Advisory Council and the Michigan Employment Security Appeal Board, to the Department of Labor under Chapter 16, respectively, subsections (a), (b), (c) of section 379 of the act, did not occur on the basis of the three transfer types (I, II, III), but, rather, each was made "an autonomous entity in the Department of Labor."

Thus, it appears that the legislative intent is that only the Michigan

Employment Security Commission, the Michigan Employment Security Advisory Council and the Michigan Employment Security Appeal Board, shall retain their autonomy. Accordingly, the language appearing in section 3 (a) does not preserve the autonomous nature of the bridge authorities, transferred on a type I basis.

Had the legislature intended that the said bridge authorities be autonomous within the Michigan Department of State Highways to which they are transferred, it would have said so, as it did in the case of the Michigan Employment Security Commission, Advisory Council and Appeal Board.

This conclusion is further sustained by the language in the second sentence of section 3 (a) of the 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."

The legislature, in the third sentence, however, caused to be retained by the transferred board, office, commission, or agency, independent authority in some areas as appears from said third sentence in section 3 (a):

"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."

Except for that independent authority, carved out and reserved from the supervisory grant of the second sentence, the principal department's authority is paramount.

The fourth sentence of section 3 (a) reads as follows:

"Under the type I 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."

These functions were designated, collectively, in my Opinion No. 4479, *supra*, as "housekeeping functions" which are to be administered by the principal department, the power to direct and the power to administer having been held by the courts to be synonymous terms.

Accordingly, it is my opinion that under the type I transfer of the bridge authorities to the Michigan Department of State Highways, said authorities lost their plenary status.

The housekeeping functions of the bridge authorities having been placed under the direction and supervision of the head of the principal department, the Michigan Department of State Highways, it is clear that the legislature has, by implication, repealed that part of the act having to do with Mackinac and International Bridge Authorities which provide that said bridge authorities may hire employees and fix their compensation.

Although repeal of statutory provisions by implication is not favored in

law, legislative intention must be given force and effect. Repeal of statute by implication is discussed in *Jackson v. Michigan Corrections Commission*, 313 Mich. 352.

Article XI, section 5 of the Michigan Constitution of 1963 reads:

“State civil service; exemptions.

“Sec. 5. The classified state civil service shall consist of all positions in the state service except those filled by popular election, heads of principal departments, members of the boards and commissions, the principal executive officer of boards and commissions heading principal departments, employees of courts of record, employees of the legislature, employees of the state institutions of higher education, all persons in the armed forces of the state, eight exempt positions in the office of the governor, and within each principal department, when requested by the department head, two other exempt positions, one of which shall be policy-making. The civil service commission may exempt three additional positions of a policy-making nature within each principal department.”

The power to direct and supervise in case of type I transfers has been construed by O.A.G. No. 4479, *supra*. Based upon premises therein set forth, the legislature intended that the Michigan Department of State Highways act as the appointing authority subject to the requirements of the Civil Service Commission. This would not, of course, prohibit the bridge authorities from recommending personnel, subject to the approval of the Director of the Michigan Department of State Highways.

An examination of existing trust indentures discloses no prohibition against the placing of the employees of the bridge authorities in the state service, subject to Civil Service Commission requirements.

The second question posed is:

“Does the Executive Organization Act of 1965 give the Highway Department full control, direction and power of approval over budgeting, expenditures, procurement, accounting, personnel, equipment and supplies inventory, and similar management functions of the Mackinac Bridge Authority? . . .”

You indicate that in the present situation, the Mackinac Bridge Authority consults with the highway department in budgetary matters, but the highway department exercises no control over the authority's budget, accounting, etc., but merely acts in an advisory capacity.

The type I transfer under the Executive organization act does not impair the obligation of any outstanding bonds and trust indentures security therefor. Article I, Section 10, Michigan Constitution of 1963; *Bullinger v. Gremore*, 343 Mich. 516.

This question relates to those functions which have been described as “housekeeping” in O.A.G. No. 4479, *supra*, in respect of which functions, it was concluded that the power to direct is synonymous with the power to administer, which the courts have held to mean to manage, control, conduct and superintend. The power to supervise is described as the

power to review all acts of subordinates and to correct or direct correction of any errors committed.

Accordingly, the department of highways may exercise such control in the areas delineated in your second question as is necessary to accomplish effective management in said areas. The control exercised must also be in keeping with the provisions of the trust indentures.

The third question is stated as follows:

“Is the maintenance and operation of the Mackinac Bridge construed to be a ‘related management function’ to be done under the direction and supervision of the principal department?”

As heretofore indicated, section 3 (a) of Act 380, P.A. 1965, grants the Michigan Department of State Highways the power to supervise and administer the bridge authorities except in the exercise of their prescribed statutory powers, duties and functions of rule-making, licensing and registrations, including prescription of rules, rates, regulations and standards, and adjudication.

None of these can be said to include maintenance of the bridges. Thus, the maintenance of the Mackinac and International Bridges is subject to the direction and supervision of the Michigan Department of State Highways.

The operation of the Bridges, however, to a great degree, falls within the “independent authority” of the bridge authorities.

Section 2 of Act 21, P.A. (Ex. Sess.) 1950, *supra*, in part, reads:

“. . . The board shall make all necessary and appropriate rules and regulations for the orderly carrying on of its affairs, . . .”

Section 3 (i) of Act 99, P.A. 1954, provides that the International Bridge Authority is empowered:

“To establish rules and regulations for the use of the project; . . .”

The proper objects of rule-making and the prescription of rates and regulations, for the bridge authorities, are the operations, management and control of the bridge. [Sec. 7 of Act 21, P.A. (Ex. Sess.) 1950, *supra*, and section 3 (i) and section 7 of Act 99, P.A. 1954.]

Although the words “maintain . . . repair . . .” appear in section 7 of Act 21, *supra*, these functions can hardly be said to be in areas in which rule-making and prescription of regulations would operate.

Therefore, rules and regulations which relate to the operation of the bridges and the prescription of the rates of tolls for its uses are within the “independent authority” of the Mackinac and International Bridge Authorities and, thus, in that area, the operation of the bridges is not subject to the direction and supervision of the Michigan Department of State Highways as the principal department.

The fourth question is stated as follows:

“What specific statutory powers, duties and functions are to be exercised by the Mackinac Bridge Authority independently of the head of the principal department?”

As heretofore discussed, the independent authority carved out of and reserved from the supervisory grant are the duties and functions of "rule-making, licensing and registration, including the prescription of rules, rates, regulations and standards, and adjudication. . . ."

As pointed out in O.A.G. No. 4479, *supra*, the powers, duties and functions to be exercised independently must be found in the basic statutes by which the bridge authorities were created and empowered. The function of rule-making and prescription of rates and regulations and standards have been discussed in answer to your third question.

Examination of the acts does not disclose duties and functions relating to licensing and registration, nor has the legislature granted to the bridge authorities any adjudicatory powers.

Accordingly, the bridge authorities shall continue to establish the rates of tolls and prescribe regulations for use of the bridges, independently of the Michigan Department of State Highways. The independent rule-making functions of the bridge authorities must be exercised in the areas excepted from the supervisory authority granted the Michigan Department of State Highways as the principal department.

Both the bridge authorities and the Michigan Department of State Highways, are bound by the provisions of any existing agreements and trust indentures given as security for bond issues.

FRANK J. KELLEY,
Attorney General.

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RETIREMENT SYSTEMS: Investment of retirement system funds.

The governing body of a public employee retirement system with total assets of \$250,000 may invest funds under its control in common stocks of diversified investment companies, subject to limitations found in the act.

No. 4511

May 26, 1966.

Hon. Ray M. Flavin
State Representative
The Capitol
Lansing, Michigan

You have asked for my opinion on the following question:

May a governing body of a public employee retirement system invest retirement system funds in a bond fund of a diversified open-end investment company under the provisions of Act 314, P.A. 1965?

With your inquiry you have submitted a copy of the prospectus of the bond fund and in the prospectus the corporation in question claims that it is a diversified management type open-end investment company registered under the investment company act of 1940. The prospectus states that the corporation issues four classes of capital shares, each class representing