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**STATE BOARD OF EDUCATION:** Apportionment of state school aid.

**STATE SCHOOL AID FUND:** Apportionment from.

**STATUTES:** Prospective operation.

**SCHOOL DISTRICTS:** State school aid.

**LEGISLATURE:** Final adjournment.

If the full benefits of Enrolled Senate Bill 115 enacted into law are to be made available to Michigan school districts for the entire fiscal year 1966-1967, the legislature must adjourn on or about December 10 so that the Enrolled Senate Bill may become law on or before March 15, 1967. None of the benefits of Enrolled Senate Bill 115 enacted into law will be available to Michigan school districts for any part of the fiscal year 1966-1967 should the Michigan legislature adjourn at a time so that the said Bill becomes effective after March 15, 1967.

No. 4553

September 20, 1966.

Mr. Glenn S. Allen, Jr.  
State Budget Director  
Office of the Governor  
Lansing, Michigan

You have requested my opinion upon the following question:

Assuming that Enrolled Senate Bill 115 becomes law, will its provisions be effective for the entire fiscal year 1966-1967 or only for that portion of the fiscal year that remains after the date the bill becomes effective?

Act 312, P.A. 1957, as amended, C.L.S. 1961 § 388.611 et seq.; M.S.A. 1959 Rev. Vol. and 1965 Cum. Supp. § 15.1919(51) et seq., makes appropriations from the state school aid fund for the support of school districts in Michigan. The state school aid fund was mandated by the people in Article IX, Section 11 of the Michigan Constitution of 1963 and one-half of all sales taxes imposed on retailers was dedicated to this fund.

Enrolled Senate Bill 115 was approved by the Michigan Senate on August 24, 1966 by vote of 19 to 7. The motion was duly made to give the bill immediate effect and the motion prevailed, two-thirds of the senators serving having voted therefor. *Journal of the Senate No. 110*, pages 2425, 2426.

The House of Representatives considered Enrolled Senate Bill 115 and passed it by vote of 61 to 35 on September 2, 1966. *Journal of the House No. 115*, page 3851. No motion to give the bill immediate effect was made in the House of Representatives.

The Bill is presently before the Governor for his consideration as required by Article IV, Section 33 of the Michigan Constitution of 1963.

Enrolled Senate Bill 115 purports to amend Sections 8, 9, 10, 12, 17 and 35 of Act 312, P.A. 1957, as amended, supra. These sections were last amended by Act 271, P.A. 1966, effective July 12, 1966.

Briefly summarized, Enrolled Senate Bill 115 would amend:

Section 8 to increase the basic per pupil membership allowance from \$278.00 to \$280.50, in certain school districts to increase the per pupil membership allowance from \$405.00 to \$407.50, and to increase the allowance for each qualified special education teacher and other personnel from \$6950.00 to \$7012.50.

Section 9 to make similar increases to intermediate school districts for special education personnel in special education programs.

Section 10 to increase state school aid fund allowances for certain school districts.

Section 12 to make corresponding increases in per pupil membership allowances and to make comparable increases for the reimbursement for special education personnel.

Section 17(d) to reduce the valuation of any school district having a resulting tax rate of 125% or more of the resulting tax rate for the balance of the school districts of the state by the percentage by which the resulting tax rates on property located within the applicant school district exceeds 125% of the resulting tax rates on property located in all other school districts of the state. The resulting tax rate is determined by computing the total taxes levied against property in the school district by all taxing agencies, including the school district, and deducting therefrom the taxes levied for school operating purposes only.

Section 35 to change the formula under which school districts employing unqualified teachers would suffer the partial loss of state school aid.

Act 312, P.A. 1957, as last amended by Act 271, P.A. 1966, supra makes appropriations from the state school aid fund for school districts to be apportioned by the State Board of Education, based upon a count of all pupils in membership on the fourth Friday after Labor Day, times the sum of \$278.00 per pupil for most districts, less the sum of 5.03 mills, times the state assessed tax valuation of the district, subject to the deduction that if the resulting tax rate of the school district, based upon the total taxes levied on property located in the district by all taxing agencies, including the school district but excluding taxes levied for school operating purposes, the tax valuation of the district shall be reduced by one-half of the amount that the resulting tax rate exceeds 125% of the resulting tax rate for the balance of the school districts of the state.

Section 24 of Act 312, P.A. 1957, supra, provides:

"The superintendent of public instruction shall, on or before the 15th day of March of each fiscal year, make the apportionment among the public school districts of the state as required in sections 8 et seq. of this act."

The apportionments made under Act 312, P.A. 1957, as amended, supra, are required to be made upon the school census of the preceding fiscal year, on the membership and number of teachers employed as of the fourth Friday following Labor Day of each year, on the number of pupils for whom transportation is allowed for the preceding fiscal year, tuition payments for the current fiscal year, per capita cost of pupils for

the preceding year, on the state equalized valuation of each school district for the calendar year, and relative to programs for physically and mentally handicapped children, upon the membership counted as of December 15 of each year, as required by Section 22 of Act 312, P.A. 1957, as amended.

Consideration must also be given to Section 25 of Act 312, P.A. 1957, as last amended by Act 221, P.A. 1962, which provides for the disposition of the apportionment made to the individual school districts on or before August 25, October 25, December 25, February 25, April 25, and June 25, in that the superintendent of public instruction shall prepare a statement of the amount to be distributed in such installment under the provisions of the act to the school districts of each county and shall deliver such statement to the state treasurer who shall draw his warrant in favor of the treasurer of each county for the amount payable to such county according to the statement for payment to the school districts.

The statutory authority conferred upon the superintendent of public instruction by Sections 24 and 25 of Act 312, P.A. 1957, as amended, supra, has been transferred to the State Board of Education pursuant to Section 14 of Act 287, P.A. 1964, being M.S.A. 1965 Cum. Supp. § 15.1023(14), subject to redelegation to the superintendent of public instruction by action of the State Board of Education.

Enrolled Senate Bill 115 would amend Act 312, P.A. 1957 to increase the per pupil membership allowance by the sum of \$2.50 and to permit the reduction of valuation of a school district in the entire sum that the resulting tax rate for the school district, as defined by the act, exceeds 125% of the resulting tax rate for the balance of the school districts of the state.

As has been pointed out, Enrolled Senate Bill 115 would also increase per pupil memberships for certain other districts, increase allowances for special education personnel, and modify the formula for assessing penalties through loss of state school aid should a district hire unqualified teachers.

Enrolled Senate Bill 115 contains no amendments to Section 24 of Act 312, P.A. 1957, supra, nor does it contain any other provision that would authorize the State Board of Education to make an apportionment of state school aid after March 15, 1967.

Article IV, Section 27 of the Michigan Constitution of 1963 provides:

"No act shall take effect until the expiration of 90 days from the end of the session at which it was passed, but the legislature may give immediate effect to acts by a two-thirds vote of the members elected to and serving in each house."

Because the legislature has not given immediate effect to Enrolled Senate Bill 115 by a two-thirds vote of members elected to and serving in each house, should Enrolled Senate Bill 115 become law it shall not take effect until the expiration of 90 days from the end of the Regular Session of 1966.

Statutes enacted by the legislature are prospective in their operation unless the legislature gives a clear, direct and unequivocal expression of its intent that the statute is to have retroactive effect. *In re Davis' Estate*, 330

Mich. 647 (1951). The legislature must express its intent to give a retropective effect to the statute by clear, positive command or such intent is to be inferred by necessary, unequivocal and unavoidable implication from the context of the statute. *Detroit Trust Company v. City of Detroit*, 269 Mich. 81 (1934).

While it is abundantly clear that the legislature in the enactment of Enrolled Senate Bill 115 intended to increase the per pupil membership allowance, the allowance for special education personnel and the method for reducing the valuation of a school district, a reading of Enrolled Senate Bill 115 indicates that the legislature has not given a clear, direct and unequivocal expression of its intent that the provisions of Enrolled Senate Bill 115 have retroactive effect, either by clear, positive command or by necessary, unequivocal or unavoidable implication from the terms of the Bill.

Enrolled Senate Bill 115 is completely devoid of any reference to the command imposed upon the State Board of Education by Section 24 of Act 312, P.A. 1957, as amended, *supra*, that it apportion state school aid to school districts on or before March 15, 1967 for the fiscal year 1966-1967. Thus it is impossible to imply that the increases in the state school aid formula and the changes in the formula for computation of school district valuation to allow for greater deduction therefrom were to be effective for the fiscal year 1966-1967 if the provisions of Enrolled Senate Bill 115 became effective after March 15, 1967.

However, if the provisions of Enrolled Senate Bill 115 do become effective *on or before* March 15, 1967, the increases in the state aid formula and the changes in the formula for computation of school district valuations to allow for greater deductions therefrom will apply in the fiscal year 1966-1967. These provisions being in full operation, the State Board of Education must then apportion state school aid for the fiscal year 1966-1967, based upon all the provisions of Act 312, P.A. 1957, as amended, *supra*, including those amendments found in Enrolled Senate Bill 115. Thus, the benefits of Enrolled Senate Bill 115 would be available for Michigan school districts for the entire fiscal year 1966-1967.

It is equally clear that should the legislature finally adjourn its regular session on a date so that the provisions of Enrolled Senate Bill 115 enacted into law take effect *after* March 15, 1967, none of the provisions of Enrolled Senate Bill 115 will be effective as to the fiscal year 1966-1967. The apportionment of state school aid for the fiscal year 1966-1967 shall have been made and there is no authority in Act 312, P.A. 1957, as amended or Enrolled Senate Bill 115 for the State Board of Education to make new or revised apportionments after that date. Thus the provisions of Enrolled Senate Bill 115 would await the new fiscal year 1967-1968 and the new apportionment of state school aid by the State Board of Education for that fiscal year.

Consequently the effectiveness of the provisions of Enrolled Senate Bill 115 enacted into law depends upon the singular fact that the legislature finally adjourn its 1966 Regular Session on or about December 10, 1966 so that the provisions of the Enrolled Senate Bill 115 be in full effect on or before March 15, 1967.

Therefore, it is my opinion, in answer to your question, that the provisions of Enrolled Senate Bill 115 enacted into law will be effective for the entire fiscal year 1966-1967 if Enrolled Senate Bill 115 takes effect on or before March 15, 1967. If Enrolled Senate Bill 115 takes effect after March 15, 1967, none of its provisions will be effective for the fiscal year 1966-1967.

FRANK J. KELLEY,  
*Attorney General.*

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**PLATS: Requirements of plat act — authority of county plat board.**

A county plat board which does not regularly employ a county plat engineer and which has not also been vested by the county board of supervisors with authority to determine whether the lands are suitable for platting purposes may only exact compliance with other statutory requirements as a condition to approval of the plat. While township boards and legislative bodies of cities and villages are vested with unconditional authority to determine whether the lands included within a plat are suitable for platting purposes, a county plat board is not authorized to adopt a rule requiring as a condition to the approval of a proposed plat that the proprietor either: (1) Fill the property to a suitable level above the water table; or (2) File a performance bond with the board conditioned upon the making of such fill upon the lots in said plat before the sale of the respective lots to a third person.

No. 4457

September 27, 1966.

Mr. John B. Daugherty  
Prosecuting Attorney  
County of Benzie  
Heinze Building  
Beulah, Michigan

You have requested my opinion regarding the authority of the Benzie County plat board to require the taking of certain action by the proprietor as a condition to the approval of a proposed plat. Your request states:

"In certain instances, property located in Benzie County and otherwise suitable for platting has a water table so close to the surface of the ground that installation of septic tanks and dry wells on the property could constitute a health hazard. To remedy this situation, it has been proposed that the County Plat Board adopt a rule requiring as a condition to the approval of proposed plats that the proprietors either 1) fill the property to a suitable level above the water table prior to platting or, 2) file a performance bond with the County Plat Board that suitable fill will be placed upon the platted lot before sale of same to any third person. Because this proposal would require that the proprietor expend money for the improvement of private property, I question the authority of the Board to impose these conditions.