(5) Your final question inquires as to the changes, if any, necessary to be made in Michigan Constitution 1963, Article IV, Section 37 (reference A) to give the legislature power to suspend a pending but not yet effective administrative rule, promulgated *during* session, by concurrent resolution or by a resolution of the joint committee on administrative rules.

We should of course bear in mind that the present constitutional provision is obviously only a stop-gap device, designed to prevent the taking effect of administrative rules promulgated *between* sessions. The joint committee's power to suspend a rule "to the end of the next legislative session," is clearly intended only to defer that rule for legislative consideration at the following session. Thus, ultimate *legislative* action is not only contemplated, but constitutes the very purpose of the provision. In no way does that interim constitutional power envision the joint committee assuming the final constitutional responsibility and function of the legislature itself to consider and pass upon the rule. The language, "suspend," is that of postponement only, not an expedient of indirect legislative disapproval or rejection.

Moreover, in the context of present law, it takes no more than a concurrent resolution to express the "legislative disapproval" which will, in all likelihood, persuade the promulgating agency to withdraw or amend its rule. Legislation will rarely be necessary.

If, however, constitutional amendment is deemed necessary by you in the respect inquired, subject Article IV, Section 37, may be changed to read as follows:

> "The legislature may, by either its concurrent resolution or the resolution of its joint committee on administrative rules, temporarily or permanently suspend any rule or regulation of an administrative agency, promulgated but not yet effective. Said joint committee may exercise such power as to rules or regulations promulgated between sessions."

This completes my answers to the several questions you have presented.

FRANK J. KELLEY,
Attorney General.

670814.2

MOTOR VEHICLES: Test of driver for alcohol content. Performance of test by physician, nurse and medical technician.

The term "direction" in section 625a of the Motor Vehicle Code does not require the personal presence of a licensed physician when a licensed nurse or medical technician withdraws blood from a person for chemical analysis provided appropriate directions have been given by a licensed physician.

No. 4559 August 14, 1967.

Mr. John H. Butts
Prosecuting Attorney
Cheboygan, Michigan 49721

You have asked my opinion on the following question pertaining to Act 104, P.A. 1964, relating to the withdrawal of blood from a person for the purpose of analysis for alcohol content:

"Does the Michigan statute under Act 104 of the Public Acts of 1964, require the personal presence of a licensed physician when he is giving directions to a licensed nurse or medical technician?"

As you indicate, Act 148, P.A. 1960, amended Act 300, P.A. 1949 (The Michigan Vehicle Code), by adding section 625a (M.S.A. § 9.2325(1); C.L.S. 1961 § 257.625). This section, as originally enacted, read in part as follows:

"(a) Only a duly licensed physician or duly registered nurse, under the supervision of a licensed physician, acting at the request of a police officer, can withdraw blood for the purpose of determining the alcohol content therein under the provisions of this act."

In Opinion No. 3557[1] dated March 29, 1961 (O.A.G. 1961-62, p. 79), it was determined that, under Act 148, P.A. 1960, nurses performing acts that are required to be performed under the supervision of a licensed physician must do so under the *immediate supervision and in the presence of a licensed physician.*

In 1964 Senate Bill No. 1170 was passed by the Senate so as to add laboratory technicians as persons qualified to take a blood sample, and also to strike the phrase "under supervision of a licensed physician." (Senate Journal 1964, p. 715) Senate Bill No. 1170 was considered by the House and amended by adding the language "under direction of a licensed physician." In this form Senate Bill No. 1170 was approved by the House (House Journal 1964, p. 1479) and the Senate concurred in such amendment (Senate Journal 1964, p. 1162).

Thus the legislature, by Act 104, P.A. 1964, amended section 625a which now provides:

"Only a duly licensed physician, or a licensed nurse or medical technician under the direction of a licensed physician, acting at the request of a police officer, can withdraw blood for the purpose of determining the alcoholic content therein under the provisions of this act."

It is a fundamental rule of statutory construction that such amendment is to be construed, unless a different intention is manifest, as changing the statute amended. *Bonifas-Gorman Lumber Co. v. Unemployment Compensation Commission,* 313 Mich. 363, at page 369. In the light of the above amendment, it is clear that the legislature intended to authorize the blood test to be given by a medical technician, as previously prohibited under subsection 2 of section 625a[2] and to strike the word "supervision," as previously construed by the Attorney General in Opinion No. 3557, so as to authorize the blood test to be given by a "licensed nurse or medical technician under the direction of a licensed physician."

The word "direction" is one of common usage. As employed in its ordinary signification, it means "An act of directing, guidance, management;

[1] This opinion also held that the withdrawal of blood from a person for chemical analysis did not constitute the practice of medicine.

[2] See O.A.G. 1961-62, Opinion No. 3558, dated Feb. 21, 1961, p. 45, which held that a laboratory technician does not qualify under the terms of Act 148, P.A. 1960, to take a blood sample.

that which is imposed by direction; command; also, authoritative instruction, information as to method." Webster's International Dictionary (2d Ed.). The term has been judicially defined to mean "a guiding or authoritative instruction; prescription; order or command." *Way v. Patton,* 241 P. 2d 895, 900 (Ore. 1952).

In *Kluttz v. Citron,* 148 N.Y.S. 2d 367 (S. Ct. App. Div., Second Dept., 1957), the New York Court, in construing section 240 of the state labor law, which provided that any person directing another to perform labor in the erection of buildings shall furnish safety devices to persons so directed, held that the word "directing" does not imply superintendence or supervision of the work done.

In *Kellyville Coal Co. v. Bruzas,* 79 N.E. 309 (Ill. 1906) the Illinois Court construed a state statute which provided that no one shall be allowed to enter a mine "except under the direction of the mine manager." In holding that the servant was under the direction of the manager within the meaning of the statutory language, although the manager was not present at the time of the accident occurrence, the Illinois Court, at pages 310 and 311, stated:

> "On account of the amount of work to be performed it was practically impossible for the mine manager to be personally present and direct these experienced men specifically as to what they should do and how they should do it . . .One of the accepted meanings of the word 'direction' is 'the act of governing, ordering or ruling,' and it would seem that where the language is general, as here, 'under the direction', anything which brings the conduct of the rockmen reasonably within the control of the mine manager in the performance of their duties would be a compliance with the statute."

Therefore, we conclude that the term "direction," as employed in paragraph 2 of section 625a, does not require the personal presence of a licensed physician when a licensed nurse or medical technician withdraws blood from a person for the purpose of chemical analysis provided appropriate directions have been given by a licensed physician.

It must be observed that a suspected inebriate must be accorded the right to have a chemical test taken pursuant to the conditions and procedures recited in subsection 3 of Act 148, P.A. 1960, which provides:

> "(3) A person charged with driving a vehicle while under the influence of intoxicating liquor who takes a chemical test administered under the direction of a police officer as provided in paragraphs (1) and (2) hereof, shall be given a reasonable opportunity to have a person of his own choosing, administer one of the chemical tests as provided in this section within a reasonable time after his detention, and the results of such test shall be admissible if offered by the defendant and shall be considered with other competent evidence in determining the innocence or guilt of the defendant. Any person charged with driving a vehicle while under the influence of intoxicating liquor shall have the right to demand that one of the tests provided for in paragraph (1) must be given him, provided facilities are reasonably available to administer such test, and the results of such test shall be admissible if offered by the defendant and shall be considered with other

competent evidence in determining the innocence or guilt of the defendant."

See, also, authorities collated in 78 A.L.R. 2d 905, et. seq.

Therefore, it is mandatory that the person tested shall, upon request, be granted the privilege of having a physician of his own choosing administer the test, in addition to the one administered at the direction of the law enforcement officer.

FRANK J. KELLEY,
Attorney General.

670818.2

TOWNSHIPS: Treasurer — compensation of, change in.

Under the 1963 Constitution and the present statutes, the electors at the annual township meeting held following election may take action to place the township treasurer upon a fee basis instead of an annual salary.

When the treasurer is compensated upon the basis of fees payable upon collection of ad valorem taxes, there is no authority to advance him a sum monthly to be deducted from the fees as collected.

Collection fees are not payable upon amounts paid by the state to reimburse the local unit for revenues lost by reason of veterans' and senior citizens' property tax exemption.

No. 4528 August 18, 1967.

Mr. Allen R. Briggs
Prosecuting Attorney
Ontonagon County
Ontonagon, Michigan

Your predecessor requested our opinion advising that at the 1965 annual township meeting in Ontonagon Township, the electors voted to change the basis of compensation of the township treasurer from a stipulated salary to the 1 percent and 3 percent collection fees allowed by the statute in the collection of ad valorem property taxes.[1] Action was then taken to provide for the payment to the treasurer of the sum of $125 per month, the total of which monthly payments were to be deducted from the amount of the collection fees as the same were received commencing the following December. Any remaining balance of the total amount of the collection fees received over and above the amount required to reimburse the contingent fund for the total amount of such monthly payments was also to be retained by the treasurer. Based thereon, you request my opinion upon three questions which have been rephrased as follows:

1. May the electors at the annual township meeting change the basis of compensation of the township treasurer after he was elected from a salary to statutory fees?

[1] Sec. 44 of Act 206, P.A. 1893, the general property tax act as amended by Act 411, P.A. 1965; M.S.A. Cur. Mat. § 7.87, pp. 61-62.