installation of plumbing must be in charge of a licensed master plumber, assuming that the plumbing act is constitutional.

"It has been held by the United States Supreme Court that no state law has force in a federal area if its enforcement would conflict with or burden the federal government in its purpose or policies in acquiring such federal area.

Penn. Dairies, Inc. v. Milk Control Commission, 87 L. Ed. 549;

Pacific Coast Dairy v. Department of Agriculture, 87 L. Ed. 560.

"This principle would probably apply to land acquired by lease as well as by the purchase of the fee title. It is our opinion that the requirements of the Michigan plumbing law would not conflict with any purpose or policy of the United States in the acquisition of land for a war housing project."

This same reasoning may be applied here unless the individuals performing the work are officers or employees of the United States.

Answering your questions specifically:

1. Individuals, corporations or partnerships or other organizations which offer professional enginering services to the federal government are subject to the provisions of Act 240, P.A. 1937, as amended, unless the land on which the services are performed is within the exclusive jurisdiction of the federal government or unless they are officers or employees of the federal government.

2. Unlicensed individuals, partnerships and corporations, and the partners and officers and directors thereof, will be subject to prosecution under Act 240 if they do not come within the exemptions discussed in the answer to your first question.

3 and 4. These questions are answered by 1 and 2 above.

FRANK J. KELLEY,
Attorney General.

670920.2

LEGISLATURE: Authority to investigate.
COLLEGES AND UNIVERSITIES: Investigation by legislative committees.

The legislature can conduct investigations of internal affairs of constitutionally established state institutions of higher education only when such investigations relate to the appropriation of funds for maintenance and support of such institutions.

No. 4606 September 20, 1967.

Honorable Emil Lockwood
State Senator
The Capitol
Lansing, Michigan

Prior to the decision of the Michigan Court of Appeals in *The Board of Control of Central Michigan University v. Members of the State Senate*

Special Committee to Investigate Faculty-Administration Relationships at Central Michigan University, et al, No. 1549 (December 23, 1965), you requested my opinion on the constitutionality of Senate Resolution 88 adopted by the Senate on April 25, 1965, and reported in Journal of the Senate No. 58, p. 723. This resolution, as the title of the case indicates, created a special committee of the Senate to investigate faculty-administration relationships at Central Michigan University.

The aforesaid decision of the Court of Appeals, from which no appeal was taken, however, renders the constitutional question moot since, as the court pointed out, the hearings were conducted and concluded without the interposition of any timely objections during the course of the investigation.

Nevertheless, because of the importance of the issue raised by your letter, I will address the following question:

> "Article VIII, Sections 5 and 6 of the Michigan Constitution of 1963 give to the governing boards of certain institutions of higher education 'general supervision of the institution and the control and direction of all expenditures from the institution's funds.' Section 4 of this article requires the legislature to appropriate moneys to maintain such institutions and further provides that 'the legislature shall be given an annual accounting of all income and expenditures of each of these educational institutions.' In view of these provisions, to what extent can a properly constituted committee of the legislature conduct an investigation into the internal affairs of such institutions?"

The people have reposed the legislative power of the State of Michigan in a senate and house of representatives, pursuant to Article IV, Section 1 of the Michigan Constitution of 1963 and each house of the legislature is expressly authorized to establish the committees necessary for the efficient conduct of its business. Article IV, Sec. 17 of the Michigan Constitution of 1963.

While no Michigan Court decision has been found passing on the power or extent of authority of a legislative committee to conduct an investigation, the Supreme Court of the United States has on numerous occasions stated its opinion as to the power of Congress to conduct investigations through designated committees. Reference to several representative decisions are illustrative and illuminating.

In *Watkins v. United States,* 354 U.S. 178, 1 L. Ed. 2d 1273 (1957), which involved the refusal of a witness to answer questions before a subcommittee of the House Committee on Un-American Activities, the court said:

> "The power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them. It comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste. But broad as is this power of inquiry, it is not unlimited. There is no general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress. * * * No inquiry is an end

in itself; it must be related to and in furtherance of a legitimate task of the Congress. Investigations conducted solely for the personal aggrandizement of the investigators or to 'punish' those investigated are indefensible." (page 1284)

Barenblatt v. United States, 360 U.S. 109, 3 L. Ed. 2d 1115 (1959), was another case involving a witness who refused to answer questions before a subcommittee of the House Committee on Un-American Activities. In the opinion of the court the following statement appears:

"The power of inquiry has been employed by Congress throughout our history, over the whole range of the national interests concerning which Congress might legislate or decide upon due investigation not to legislate; it has similarly been utilized in determining what to appropriate from the national purse, or whether to appropriate. The scope of the power of inquiry, in short, is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.

"Broad as it is, the power is not, however, without limitations. Since Congress may only investigate into those areas in which it may potentially legislate or appropriate, it cannot inquire into matters which are within the exclusive province of one of the other branches of the Government. Lacking the judicial power given to the Judiciary, it cannot inquire into matters that are exclusively the concern of the Judiciary. Neither can it supplant the Executive in what exclusively belongs to the Executive. And the Congress, in common with all branches of the Government, must exercise its powers subject to the limitations placed by the Constitution on governmental action, more particularly in the context of this case the relevant limitations of the Bill of Rights." (pages 1120 and 1121)

In *Gibson v. Florida Legislative Investigation Committee,* 372 U.S. 539, 9 L. Ed. 2d 929 (1963), petitioner, then president of the Miami branch of the NAACP, was ordered to appear before a committee of the Florida state legislature investigating infiltration of Communists into organiaztions operating in the field of race relations and to bring with him membership records of the association which were in his possession or custody. He refused to produce the membership records claiming that their use by the committee would interfere with the members' right of association under the Fourteenth Amendment. The Florida State Court adjudged the petitioner in contempt. The Supreme Court of the United States reversed. Mr. Justice Goldberg in delivering the opinion of the Court wrote:

" * * * there can be no question that the State has power adequately to inform itself—through legislative investigation, if it so desires—in order to act and protect its legitimate and vital interests. * * * It is no less obvious, however, that the legislative power to investigate, broad as it may be, is not without limit. The fact that the general scope of the inquiry is authorized and permissible does not compel the conclusion that the investigatory body is free to inquire into or demand all forms of information. Validation of the broad subject matter under investigation does not necessarily carry with it automatic and wholesale validation of all individual questions, subpoenas, and documentary demands.

> * * * As declared by the respondent Committee in its brief to this Court, 'Basically, this case hinges entirely on the question of whether the evidence before the Committee [was] . . . sufficient to show probable cause or nexus between the NAACP Miami Branch, and Communist activities.' We understand this to mean—regardless of the lable applied, be it 'nexus,' 'foundations,' or whatever—that it is an essential prerequisite to the validity of an investigation which intrudes into the area of constitutionally protected rights of speech, press, association and petition that the State convincingly show a substantial relation between the information sought and a subject of overriding and compelling state interest." (pages 934 and 935)

In addition to these selective but representative, statements of the United States Supreme Court, courts of last resort in several sister states have had occasion to pass on the extent of power in their state legislature to conduct legislative investigations and the following cases illustrate the attitude of these courts.

In an action by a county prosecutor for injunctive relief and declaratory judgment to restrain the members of a legislative investigatory committee from proceeding to inquire into the conduct of the prosecutor in obtaining unauthorized recordings of conversations by wire tapping, the Supreme Court of New Jersey in the case of *Morss v. Forbes, et al.,* 24 N.J. 341 (1957), 132 A. 2d 1, at page 8, made the following comments:

> "The Legislature has the authority to investigate, and its powers in this respect are indeed broad. Normally, it has the power to obtain information on any subject relevant to the proper discharge of its legitimate functions. (citations omitted) The necessity for the obtainment of such information is no longer open to debate and has been consistently and vigorously espoused.
>
> "Furthermore, it is elementary that a committee may be endowed with some portion of the investigatory power which the Legislature enjoys as a whole. (citations omitted) Otherwise, the effective exercise of such power would be impossible and its benefits illusory. When a committee is authorized to conduct investigations, the creative resolution becomes the charter defining its authority. The committee must abide by the limitations thus placed upon its authority, and may not operate according to the mere whims and caprices of its members." (page 8)

The case of *McGinley v. Scott, et al.,* 410 Pa. 310, 164 A. 2d 424 (1960), involved an action to enjoin a committee appointed by the state senate from proceeding with an investigation of alleged election law frauds and the conduct of the district attorney. The Supreme Court of Pennsylvania in an opinion written by the Chief Justice made the following pronouncements:

> "The right to investigate in order to acquire factual knowledge concerning particular subjects which will, or may, aid the legislators in their efforts to determine if, or in what manner, they should exercise their powers, is an inherent right of a legislative body, ancillary to, but distinct from, such powers. It is immaterial that laws drafted as a

result of the legislative investigation can not be passed at the session at which the committee was constituted.

* * *

"As already mentioned, the justification for a legislative investigation, whether conducted by one or both of the houses of the General Assembly, is the ascertainment of facts and other relevant information to aid the members of the legislative bodies in formulating, drafting and enacting remedial or other beneficial laws. Such is the predominant legally permissible purpose of a legislative investigative committee." (pages 429 and 430)

See also: *State of Kansas ex rel. Fatzer as Attorney General of the State of Kansas v. Anderson, et al.,* decided by the Supreme Court of Kansas in 1956, 180 Kan. 120, 299 P. 2d 1078, which held (quoting from syllabus):

"Legislatures have general investigatory powers, but this power is not absolute and is limited to the obtaining of information on matters which fall within the proper field of legislative action."

Applying these general statements to the subject question, since Article VIII, Sec. 4 of the Michigan Constitution of 1963, supra, commands the legislature to appropriate moneys to maintain designated universities and since this duty must be discharged in an enlightened and judicious manner, the legislature has ample authority to obtain information needed for proper discharge of that duty through its normal processes of investigation.

But recognition must also be given to the reverse side to the coin. This other side is the traditional independence from political control of universities in this state which is constitutionally established and is underscored by decisions of the Michigan Supreme Court.

In *The Regents of the University of Michigan v. The Board of Education of the City of Detroit,* 4 Mich. 213 (1856) pp. 224 *et seq.*, the Michigan Court noted that, prior to the Constitution of 1850, the University of Michigan had been organized and operated by an act of the Legislature (Laws of 1837, page 102) and that the 1850 Constitution for the first time declared the Board of Regents to be a separate body corporate (Article XIII, Section 8).

Article VIII, Sections 5 and 6 of the Michigan Constitution of 1963, providing that governing boards of certain institutions of higher education shall constitute bodies corporate which have "general supervision of the institution and control and direction of all expenditures from the institution's funds," is similar to language found at Article XI, Sections 4 and 5 of the Michigan Constitution of 1908; and Article XIII, Sections 7 and 8 of the Michigan Constitution of 1850. Although the earlier constitutions did not comprehend as extensive a list of state universities as this most recent document, the interpretations given to the pertinent language must be the same.

In *Sterling v. Regents of University of Michigan,* 110 Mich. 369 (1896), holding invalid an act of the Legislature establishing a homeopathic medical department in Detroit, the Court discussed at length the history and context of the action by which the entire control of the University was placed in the hands of a permanent board and taken away from the Legislature.

At pages 375, 376 and 377, Mr. Justice Grant quoted from 2 House Documents 1840, p. 470, as follows:

" 'No *State* institution in *America* has prospered as well as independent colleges with equal, and often with less, means. Why they have not may be ascribed, in part, to the following causes: They have not been guided by that oneness of purpose and singleness of aim (essential to their prosperity) that *others* have whose trustees are a permanent body, —men chosen for their supposed fitness for *that very office,* and who, having become acquainted with their duties, *can* and are *disposed* to pursue a *steady* course, which inspires confidence and insures success, to the extent of their limited means. *State* institutions, on the contrary, have fallen into the hands of the several legislatures, fluctuating bodies of men, chosen with reference to their supposed qualifications for *other* duties than cherishing literary institutions. When legislatures have legislated directly for colleges, their measures have been as *fluctuating* as the changing materials of which the legislatures were composed. When they have acted through a board of trustees, under the show of giving a representation to *all,* they have appointed men of such *dissimilar* and *discordant* characters and views that they never could act in *concert;* so that, whilst supposed to act for and represent *everybody,* they, in fact, *have* not and *could* not act for *anybody.*

" 'Again, legislatures, wishing to retain all the power of the State in their own hands, as if they alone were competent or disposed to act for the general good, have not been willing to appoint trustees for a length of time sufficient for them to become acquainted with their duties, to become interested in the cause which they were appointed to watch over, and feel the deep responsibility of the trust committed to them. A new board of trustees, like a legislature of new members, not knowing well what to do, generally begins by undoing and disorganizing all that has been done before. At first they dig up the seed a few times, to see that it is going to come up; and, after it appears above the surface, they must pull it up, to see that the roots are sound; and they pull it up again, to see if there is sufficient root to support so vigorous branches; then lop off the branches, for fear they will exhaust the root; and then pull it up again, to see why it looks so sickly and pining, and finally to see if they can discover what made it die. And, as these several operations are performed by successive hands, no one can be charged with the guilt of destroying the valuable tree. Whilst State institutions have been, through the jealousy of State legislatures, thus sacrificed to the impatience and petulance of a heterogenus and changeable board of trustees, whose term of office is so short that they have not time to discover their mistakes, retrace their steps, and correct their errors, it is not surprising that State universities have hitherto, almost without exception, failed to accomplish, in proportion to their means, the amount of good that was expected from them, and much less than colleges in their neighborhood, patronized by the religious public, watched over by a board of trustees of similar qualifications for duty, and holding the office permanently, that they may profit by experience.

> " 'The argument by which legislatures have hitherto convinced themselves that it was their duty to legislate universities to death is this: "It is a State institution, and we are the direct representatives of the people, and therefore it is expected of us; it is our right. The people have an interest in this thing, and we must attend to it." As if, because a university belongs to the people, that were reason why it should be dosed to death for fear it *would* be sick, if left to be nursed, like other institutions, by its immediate guardians. Thus has State after State, in this American Union, endowed universities, and then, by repeated contradictory and over legislation, torn them to pieces with the same facility as they do the statute book, and for the same reason, because they have the right.' "

After describing the mechanism by which in 1850 (Article XIII, Section 8), the organic law was changed to place the university under the control of regents elected by the people, Mr. Justice Grant says, at page 379:

> "Obviously, it was not the intention of the framers of the Constitution to take away from the people the government of this institution. On the contrary, they designed to, and did, provide for its management and control by a body of eight men elected by the people at large. They recognized the necessity that it should be in charge of men elected for long terms, and whose sole official duty it should be to look after its interests, and who should have the opportunity to investigate its needs, and carefully deliberate and determine what things would best promote its usefulness for the benefit of the people. Some of the members of the convention of 1850 referred in the debates to two colleges (one in Virginia and the other in Massachusetts) which had been failures under the management by the State. It is obvious to every intelligent and reflecting mind that such an institution would be safer and more certain of permanent success in the control of such a body than in that of the legislature, composed of 132 members, elected every two years, many of whom would, of necessity, know but little of its needs, and would have little or no time to intelligently investigate and determine the policy essential for the success of a great university."

In *Board of Regents of the University of Michigan v. Auditor General,* 167 Mich. 444 (1911), holding that the Auditor General had no power to audit expenditures of the University of Michigan from funds derived from taxes, the Court said at page 450:

> "By the provisions of the Constitution of 1850, repeated in the new Constitution of 1909, the board of regents is made the highest form of juristic person known to the law, a constitutional corporation of independent authority, which, within the scope of its functions, is coordinate with and equal to that of the legislature. . . . That the board of regents had independent control of the affairs of the university by authority of these constitutional provisions is well settled by former decisions of this court. *People v. Regents,* 4 Mich. 98; *Weinberg v. Regents,* 97 Mich. 254 (56 N.W. 605); *Sterling v. Regents,* 110 Mich. 382 (68 N.W. 253, 34 L.R.A. 150); *Bauer v. State Board of Agriculture,* 164 Mich. 415 (129 N.W. 713). Strong and unequivocal language is used in these decisions.

" ' . . . Under the Constitution, the State cannot control the action of the regent. . . . *Weinberg v. Regents, supra.*' "

In O.A.G. No. 2227 dated December 9, 1955, Report of the Attorney General, 1955-56, Vo. I, page 721, the cases are collated. That opinion ruled that a public act dealing with the authority of the faculty to pass rules and regulations for the use of laboratories, libraries and museums of the college was a violation of the Constitution of 1908 in that the exclusive authority of the governing body of the college or the university to generally supervise the affairs of the university was violated.

More recently, on January 8, 1965, in an opinion addressed to the Board of Trustees of Michigan State University, which opinion is unnumbered, I ruled that an appropriation act purporting to make conditions upon the control and direction of expenditures from university funds was beyond the power of the Legislature and such appropriations are without valid conditions.

The question thus becomes: *How are these two important values to be reconciled? The legislature must obtain the necessary information to intelligently determine the proper amount to appropriate to each of the universities and it must be given the right to obtain such information through its investigative powers. On the other hand, the power of investigation may not be employed as a means of derogating from the traditional independence of the universities. Giving sufficient recognition to both interests, it is my opinion that the legislature has authority to conduct investigations into all matters relating to the financial requirements of institutions of higher education in this state, but its investigations may not go beyond the scope of these financial needs since it lacks constitutional authority to enact any legislation outside of this sphere unless the matter is one affecting general problems of the community as distinguished from one relating exclusively to the functions of the University. O.A.G. 1955-56, Vol. 1, page 720. However, areas of investigation involving financial needs must be broadly construed and if information concerning such internal matters as the relationship between the faculty and the administration is sought for the legitimate purpose of determining a university's financial requirements, the investigation is within the constitutional authority of the legislature. But the investigatory process may not be used for such irrelevant purposes as the airing of personal disputes or individual grievances.*

The legislature should therefore proceed carefully in selecting areas of investigation where state institutions of higher education are concerned. In addition, care should be employed in drafting the authorizing resolution since, as stated by the Supreme Court of New Jersey in the *Morss* case, *supra,* the resolution becomes the charter defining the authority of the select committee and, as such, generally marks the boundaries of legitimate inquiry.

In addition, when a resolution has reposed sufficient investigative powers upon a properly constituted legislative committee empowering it to attain information concerning relevant internal matters of the universities, it is possible that specific questions may be put to witnesses which go beyond

the legitimate scope of inquiry. When such questions are put, objection may be made, and a witness may be justified in refusing to answer such questions.

FRANK J. KELLEY,
Attorney General.

670922.2

TAXATION: Exemption of the United States from ad valorem property tax under Act No. 322, P.A. 1941, is neither repealed nor modified by Act No. 288, P.A. 1966.

Proration procedures on ad valorem taxes under Section 2 of Act No. 288, P.A. 1966, neither repeals nor modifies Act No. 322, P.A. 1941.

UNITED STATES: Act No. 322, P.A. 1941, exempting the United States from ad valorem taxes upon property acquired between the date of the tax roll's completion and the lien date is neither repealed nor modified by Act No. 288, P.A. 1966.

No. 4592 September 22, 1967.

Mr. James H. Cook
Prosecuting Attorney
Alcona County Building
Harrisville, Michigan 48740

The federal government on November 28, 1966, acquired 26 acres of shore property in Alcona Township, Alcona County, Michigan. As part of the purchase agreement, it agreed to satisfy any liens or encumbrances on the property and apply the amounts so paid against the purchase price. The United States Department of Agriculture, Forest Service, requested cancellation of the 1966 taxes.

The State Treasurer, successor to the Auditor General,[1] in fulfillment of the duties specified by Act No. 322, P.A. 1941,[2] ordered that the assessment for the year 1966, which became a lien on the property on December 1, 1966, be cancelled in accordance with Act No. 322, the pertinent provision thereof being as follows:

> "The auditor general is hereby authorized, empowered and directed to cancel all taxes, general and special, assessed upon lands, prior or subsequent to the effective date of this act, the title to which vested in the United States of America between the date the tax roll was required to be completed and the date the taxes become a lien on said lands."

You ask my opinion whether, under the aforementioned purchase agreement, the United States is liable for payment of the 1966 ad valorem taxes despite the provisions of Act No. 322, P.A. 1941, for their cancellation.

The purchase agreement contemplates that the United States be liable

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[1] Act No. 380, P.A. 1965 [C.L.S. § 16.101 et seq.; M.S.A. 1965 Cum. Supp. § 3.29(1)].

[2] C.L. '48 § 3.181; M.S.A. § 7.1027.