

their Names inserted in the Register [of voters shall] . . . give or send to the said Overseers, on or before the twentieth Day of *July* then next ensuing, a Notice in Writing, . . ." Several persons delivered the required notice to the overseers on the 20th of July, which happened to be a Sunday.

In holding that such notice might legally be given on Sunday, the court pointed out that the notice was not of a judicial nature, such as a writ of summons or a judgment, and in fact required no affirmative act on the part of the overseer:

"ERLE, J.—We should violate the express words of the statute, if we construed it as the revising barrister has done. Then it is said, that there is a hardship upon the overseer; but he is not called upon to perform any duty on that day, and there is nothing to interfere with his most strict observance of the Sunday."¹²

Thus it is my opinion that the acceptance of a Sunday registration, although not in pursuance of a statutory right, is valid in view of the constitutionally guaranteed right to vote.

In view of the foregoing, it is my opinion, therefore, that a voter does not have the right to demand that his registration be taken on Sunday. The question of whether to accept the registration on Sunday is discretionary with the city or township clerk and therefore legal means are not available by which he may be compelled to accept Sunday voter registrations. If his registration is taken on that day, however, such registration will be valid.

FRANK J. KELLEY,
Attorney General.

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CONSTITUTIONAL LAW: Funding of retirement benefits.

RETIREMENT SYSTEMS: Judges — Prohibition of state general fund appropriation.

Prohibition in Section 21 of the judges' retirement act of appropriation to the judges' retirement system from the state general fund is neither superseded or voided by, nor repugnant to Article IX, Section 24 of the Michigan Constitution of 1963.

No. 4613

June 10, 1968.

Mr. Lawrence L. Farrell
Executive Secretary
Judges' Retirement System
330 Lewis Cass Building
Lansing, Michigan

You have asked my opinion on a question which may be stated as follows:

Is the provision of the judges' retirement act prohibiting appropriations from the general fund of the state to the annuity reserve fund under that Act superseded or voided by the provision of the Michigan

¹² 15 L.J.C.P. 70, 72 (C.B., 1846).

Constitution of 1963 requiring public retirement benefits accruing each year to be funded that year?

Act 198, P.A. 1951, as amended, being C.L.S. 1961 § 38.801, et seq.; M.S.A. 1962 Rev. Vol. § 27.125(1) et seq., is known as the judges' retirement act. Section 21 of the act, as last amended by Act 114, P.A. 1960, creates an annuity reserve fund from which is paid all annuities and benefits in lieu of annuities, as provided by the act.

The fund is financed by portions of filing fees paid by court litigants throughout the state and from transfers from another fund into which is paid members' contributions. Section 21, since its original enactment, has contained the following prohibition:

"The state of Michigan shall not be liable for and no appropriations shall be made of any moneys from the general fund of the state to the annuity reserve fund herein created."

Article IX, Section 24 of the Michigan Constitution of 1963 provides:

"The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby.

"Financial benefits arising on account of service rendered in each fiscal year shall be funded during that year and such funding shall not be used for financing unfunded accrued liabilities."

The question is whether the paragraph last cited supersedes or voids the statutory prohibition on the use of general fund moneys for annuities for judges.

The applicable general rule is stated in 50 Am. Jur., "Statutes" § 541, p. 547:

"Repeals of statutes by later constitutional provisions by implication are not favored, and in order to operate as such a repeal, the courts require that the repugnancy between the statute and the constitution be obvious or necessary. Under this rule, if the statute and constitutional provision, by any fair course of reasoning, can be reconciled or harmonized, this must be done and the statute allowed to stand."

In re Advisory Opinion to the Governor, 132 So. 2d 163 (Fla. 1961); *Opinion of Justices*, 36 So. 2d 480 (Ala. 1948).

The above is undoubtedly a corollary of the rule that statutes are presumed to be constitutional unless the contrary clearly appears. *People v. Sell*, 310 Mich. 305 (1945); *Lawrence Baking Co. v. Unemployment Compensation Commission*, 308 Mich. 198 (1944).

In O.A.G. 1963-64, p. 508, No. 4346, it was ruled that the constitutional provision in question imposed a duty to fund during a particular fiscal year only those financial benefits arising on account of services rendered in that year. Funding for previous years of accrued benefits was not included within its meaning. No ruling was made on the source of the funds to be used for this purpose.

It is my opinion that Article IX, Section 24 merely requires that financial benefits arising on account of service in a year be funded that same fiscal

year regardless of the source of funds. The source is left to the discretion of the state or political subdivision.

Such an interpretation is consistent with the fact that the underlying policy behind the constitutional provision is financial and actuarial soundness. As stated in the Address to the People, the Convention comment to this section reads in part:

"The section is an attempt to rectify, in part, policies which have permitted sizable deficiencies to pile up in retirement systems in this state. Under this section, accruing liability in each fiscal year must be funded during that year, thus keeping any of these systems from getting farther behind than they are now."

Official Record, Constitutional Convention 1961, Vol. II, p. 3402.

Surely there was no intention of dictating the source of funds to be used to achieve this goal. As long as the underlying policy was achieved, nothing prevents the legislature from prohibiting the use of specific funds for this purpose.

In the case of the judges' retirement system, the legislature has provided for funding by use of portions of court filing fees throughout the state and by member contributions. If funding were insufficient to comply with this constitutional provision, adjustment could be made in these sources to accomplish the desired result. Thus the statute is readily harmonized with Article IX, Section 24 of the Michigan Constitution.

This interpretation is clearly indicated by the Constitutional Convention debates which may be consulted to determine the meaning and intent of the framers of Article IX, Section 24. *Burdick v. Secretary of State*, 373 Mich. 578 (1964). When the delegates discussed this matter, Mr. Brake, Chairman of the Committee on Finance and Taxation which drafted and submitted the instant constitutional provision, received the following inquiry from delegate Erickson:

"MR. ERICKSON: . . .

"I have just one question to ask the committee. That is in regard to the statute for circuit judges. I believe that statute provides that no payments can be made from the general fund for the circuit judges' retirement system. I was just wondering what the effect of that would be on this section.

"CHAIRMAN MARTIN: Mr. Brake.

"MR. BRAKE: I'm sure this section would in no way change that. The circuit judges' retirement system, as far as the state is concerned, is financed by making everyone who starts a lawsuit pay into that fund as part of the entry fee of the case which he pays to the county clerk. This would make no change in it."

Official Record, Constitutional Convention 1961, Vol. I, p. 772.

This is not to say that the legislature could not, should it choose to do so, expressly eliminate that language prohibiting a general fund appropriation for judges annuities. It is my opinion, however, that the answer to your

question is "No" and that the present prohibition of Section 21 of the Judges' Retirement Act is neither superseded or voided by, nor repugnant to Article IX, Section 24 of the Michigan Constitution of 1963.

FRANK J. KELLEY,
Attorney General.

680618-1

PUBLIC OFFICES & OFFICERS: Conflict of interest.

COLLEGES & UNIVERSITIES: Officers in conflict of interest.

A vice president for business and finance and treasurer of a state university is prohibited from having a personal pecuniary interest in a contract with his institution which might require him to choose between advancing his own interest or that of the public.

Where a vice president for business and finance and treasurer of a state university, acting on behalf of a corporation in which his wife owns a substantial interest (1) employs the principal architect of the university to design a building, (2) obtains funds from the bank in which the university has its deposits to finance construction of the building, (3) employs contractors who do substantial business with the university to erect the building, and (4) leases a substantial portion of the building to a company which does considerable business with the university, there is such an indirect interest in the contracts of the university with these firms as to constitute a substantial conflict of interest in violation of Article IV, Section 10 of the Michigan Constitution of 1963 on the part of the vice president.

No. 4646

June 18, 1968.

Representative Jack Faxon
House of Representatives
Lansing, Michigan

You requested my office to investigate certain financial transactions involving Philip J. May, Vice President for Business and Finance and Treasurer of Michigan State University and, based upon facts and circumstances ascertained by this investigation, to render an opinion as to whether a conflict of interest exists between his personal financial ventures and his public responsibilities.

In his official capacity as Vice President for Business and Finance and Treasurer of Michigan State University Mr. May is the chief administrative officer responsible for fiscal affairs of the institution. Originally appointed as Comptroller on March 15, 1947 and subsequently given the title of Vice President for Business and Finance on July 11, 1957, Mr. May has held this position for more than twenty years. Subject to broad policies established by the Board of Trustees, his duties include the collection, management, investment and disbursement of the funds of the institution. On behalf of the Board, he deals with persons and firms doing business with the University, reviewing their claims for payment and making recommenda-