lished banking custom for a bank to so close; and, second, in the situation where it is the custom of banks to remain open during such periods, a bank may safely close by specifically contracting with its depositors that it may so close and, in addition, giving reasonable public notice of the fact."

FRANK J. KELLEY,
Attorney General.

690127.2

CONSTITUTIONAL LAW: Natural Resources—Constitutionally Declared Public Policy—Statutory Construction.

WATER RESOURCES COMMISSION: Authority—Copper and Iron Mining Operations.

1. **Art. 4, Sec. 52, Constitution of 1963, declares State's public policy is that the air, water and other natural resources of the State are to be protected from pollution, impairment and destruction and to this extent it prohibits the legislature from enacting any law which would violate the constitutionally declared public policy.**
2. **Statutes governing Water Resources Commission are not to be construed to permit destructive pollution of streams in the State.**
3. **Copper and iron mining operations are subject to the protective provisions of the water resources act.**
4. **Water Resources Commission is not authorized to issue order allowing destruction of fish and game habitat.**

No. 4590

January 27, 1969.

Mr. Loring F. Oeming
Executive Secretary
Water Resources Commission
Department of Natural Resources
200 Mill Street
Lansing, Michigan 48913

By recent letter you ask my opinion of the legality of a proposed order of the Water Resources Commission in connection with the proposed new use of Hills Creek and Lake Superior, Houghton and Keweenaw Counties, by Calumet and Hecla, Incorporated, Calumet Division, for disposal of waters from unwatering of the Calumet Conglomerate Lode in Houghton County. The company in its written statement and supplementary letters filed with the Commission, pursuant to Sec. 8(b) of Act 245, P.A. 1929, as last amended by Act 405, P.A. 1965[1] proposes to dispose of an average of 6,000 gallons per minute of chloride containing waste water into Hills Creek. The company estimates that the chlorides contained in the waters to be pumped from this mine will average 5,000 to 20,000 milligrams per liter, and you say this will result in the total loss of fish and aquatic habitat in Hills Creek. Hills Creek is a small stream approximately 7 miles long

[1] C.L.S. 1961, § 323.8, as amended by P.A. 1965, No. 405 M.S.A. 1968 Cum. Supp. § 3.528.

which flows through Houghton and Keweenaw Counties and discharges into Lake Superior.

Specifically, you inquire as follows:

"1. In the light of the wording of Section 5, Act 245, which states in part: 'It (the Commission) shall have the authority to take all appropriate steps to prevent any pollution which is deemed by the Commission to be unreasonable and against public interest in view of the existing conditions in any lake, river, stream or other waters of the state' is the proposed Order illegal when viewed in relation to the positive provisions of Section 6(A) which generally make it unlawful to discharge into waters of the state any substance which will cause injuries specified therein.

"2. Are the exceptions contained in Section 12 of Act 245, as amended by Act 405, P.A. 1965, constitutional in view of the equality and other provisions of the Constitution?

"3. What is the extent of the authority which the Commission may exercise in invoking the provisions of Section 7, 8(B) and 10 of Act 245, P.A. 1929, as amended, where discharges of pollutional substances from iron and copper mining operations are involved?

"4. Do the provisions of Section 12, Act 245, as amended, in any way modify or restrict the Commission's authority to impose restrictions on water discharged from 'underground iron and copper mining operations' sufficient to fully meet the requirements of Section 6(A) when a statement for new use has been filed pursuant to Section 8(B)?"

A review by my office of the Order of Determination proposed to be made by the Commission discloses that the Order would allow discharges, for a period not to exceed 2 years, of 6,000 gallons per minute to Hills Creek and would require that discharges not contain chloride or other substances sufficient to create conditions in the waters of Lake Superior which may become injurious to domestic, commercial, industrial, recreational or other use, or which are or may become injurious to the value or utility of riparian lands, or which are or may become injurious to livestock, wild animals, birds, fish, aquatic life or plants or whereby the growth or propagation thereof be prevented or injuriously affected. The proposed Order also requires tests of the chloride content of water intakes from Lake Superior. Limitations are placed upon moving chloride concentrations and the Chief Engineer of the Water Resources Commission is required to be notified when these exceed a certain figure. Provision is also made for the making of studies of Lake Superior during the summer months. It appears that the proposed Order of Determination adequately protects the waters of Lake Superior; however, no requirements are included which would provide for the protection of Hills Creek.

The fundamental question raised by your inquiry is, may the natural resources in a stream in this State be lawfully destroyed when, pursuant to an Order of the Commission, a person is permitted to discharge into such stream pollutional substances which concededly will result in the total loss of fish and aquatic habitat therein.

Act 245, P.A. 1929, as last amended by Act 405, P.A. 1965,[2] under which the Commission derives its power and authority must be construed in light of Article IV, Section 52 of the Michigan Constitution of 1963 which provides:

> "The conservation and development of the natural resources of the state are hereby declared to be of paramount public concern in the interest of the health, safety and general welfare of the people. The legislature shall provide for *the protection of the air, water and other natural resources of the state from pollution, impairment and destruction.*" (Emphasis supplied)

This constitutional provision appears for the first time in the State's history in the 1963 Constitution and has not as yet been the subject of judicial construction. However, the questions you ask, as I review them, require that consideration be given to its meaning and purpose.

It is apparent that the first sentence of this provision enunciates a public policy judgment, namely, that "the conservation and development of the natural resources of the state" is an area of public interest of such present importance that it is characterized as being of "paramount public concern." This sentence carries the idea that it is a pronouncement of strong public consensus involving evaluation of present conditions and public needs. The sentence which follows contains the word "shall" and, on its face, carries the idea of a command to the legislature to protect the "air, water and other natural resources of the state from pollution, impairment and destruction."

To ascertain the meaning of this section, resort may be had to the debates and actions of the Constitutional Convention and the address to the people. *Burdick v. Secretary of State* (1964), 373 Mich. 578.

This section as originally worded was committee proposal 125 which the committee on emerging problems recommended be included in the Constitution and provided:

> "The State holds a paramount interest in the air, waters, and natural resources of the state, in the interest of the health, safety, and welfare of the people. The legislature shall enact appropriate legislation to protect the air, waters, and other natural resources of the state against pollution, impairment or destruction, so that the interest of the people may be preserved."[3]

In introducing committee proposal 125, the Chairman Mr. Millard stated:

> "Of late years there has been a growing awareness, in this state and in our country at large, of the prime importance of preserving our water resources, of protecting air and water against pollution, and of adopting comprehensive public policies to protect natural resources against thoughtless wastage and spoilation generally. * * *
>
> "The proposed section submitted herewith is merely declaratory and has no automatic self-executing quality. The wording has been exam-

[2] Cl. 1948 and C.L.S. 1961, §§ 323.1 et seq., as amended by P.A. 1963, No. 165 and P.A. 1965, No. 405; M.S.A. Rev. Vol. 1961, and 1968 Cum. Supp. §§ 3.521, et seq.

[3] Official Record, Constitutional Convention 1961, Vol. 2, p. 2602.

ined by Professor William Pierce of the law school of the University of Michigan, who asserts that the section would not alter existing water law in any respect, either in riparian rights, meander lines or otherwise. * * *

"The consequence of adoption of the provision, in short, does not lie in any alteration of existing law.

"Adoption of the provision would appear to have 2 possible beneficial results: first, it calls upon the legislature to take appropriate legislative action to guard the public interest in water, air, and other natural resources. The legislature retains, in fact, full discretion to act or not to act, as it wishes, but the responsibility of the legislature for evolving public policy in these matters is emphatically emphasized. Second, it seems probable that in the event of a conflict in the courts over the extent of the police power of the state in the area of natural resources, the courts might well be inclined more strongly to support the 'public welfare' and 'police power' interpretation of the law. With the growing interest of the public in the general welfare aspects of conservation, such a judicial trend would be altogether desirable."[4]

The committee of the whole of the Convention voted not to adopt a committee-sponsored amendment to this proposal[5] which, after the word "destruction," would have added "and to regulate the development and use thereof" so that the language would have read:

"The legislature shall enact appropriate legislation to protect the air, waters, and other natural resources of the state against pollution, impairment, or destruction, and to regulate the development and use thereof, so that the interest of the people may be preserved."[6]

In speaking to the Convention on this amendment, Mr. Yeager, a member of the Committee on emerging problems, said:

"We had some testimony before our committee on this question of air and water pollution, and air and water pollution is becoming one of the most severe problems that faces our civilization today. This committee is supposed to be a committee on emerging problems, and this is not only an emerging problem for the future, it is a problem that is with us right now."[7]

In speaking on the same amendment, Mr. Wanger called the Convention's attention to the word "shall" and said:

"Mr. Chairman and members of the committee, Mr. Millard has stated in this amendment, 'regulate the development and use thereof;' this, in common with the rest of the proposal, does not give the legislature any power it does not have, and, indeed, has not had probably since the beginning of our state, and, therefore, from a legal stand-

[4] Journal 104, p. 794, Official Record, Constitutional Convention, Vol. 2, p. 2602.
[5] Ibid, p. 2607.
[6] Ibid, p. 2603.
[7] Ibid, p. 2603.

point, it obviously doesn't add anything to the constitution. Its purpose, however, as is stated, is sort of a memorial—and since the word 'shall' is used—a command to the legislature to carry out the intent of the committee, and I am sure of the convention, to preserve, in the interest of sound conservation, the resources of this state."[8]

Vice-Chairman Brown, in speaking on the proposal and the amendment, said:

"In the main, the problems we are about to consider point the way, however haltingly, for the legitimate state interests and the future problems of the people and of our state.

"In regard to Committee Proposal 125 and the amendment although merely declaratory, it does institute the obligation of conservation in the interest of the people, and I therefore urge its support and the support of the accompanying Millard amendment.

"We all realize that our great upper peninsula was despoiled through private entrepreneurs during the last century without thought of the future consequences for the people of this century. Therefore, a positive rather than a merely defensive posture, in regard to matters of conservation is of the utmost importance to guarantee that this type of mass exploitation and spoilage shall not again occur."[9]

Following the rejection of the aforesaid committee-proposed amendment, Mr. Shackleton and Mr. Sharpe proposed an amendment which would strike out the words "a paramount" after the word "holds" and substitute language so that the first sentence would read:

"The state holds an interest in the air, waters, and natural resources of the state, because of its concern in the interest of the health, safety, and welfare of the people."[10]

That this was an attempt to water down and weaken the interest and concern of the state with respect to its natural resources is evident by the following debate which ensued on this proposed amendment.

"MR. FIGY: Mr. Chairman, fellow delegates, * * * I am wondering what we might be faced with in the future with fallout and air pollution, water pollution and all of the other things that we might be confronted with in the life of this constitution, if we are not justified in calling attention to this in the constitution. We say 'the state holds a paramount interest * * *' it is a first interest, if you please, '* * * in the air, waters, and natural resources * * *.'

"Are we, as individuals, going to do something about fallout? Are we going to do something, as individuals, about water pollution? Are we going to do things as individuals about natural resources? I don't think we can do it. We must have the state or some leadership to develop and protect these things.

"Therefore, I think it is proper that we have in here that the state

[8] Ibid, p. 2606.
[9] Ibid, p. 2604.
[10] Ibid, p. 2607.

holds a paramount interest, and I want to say I think Delegates Millard and Hatch will agree with me, that it was not our intention to set up and rigid rules along this line, but we did think, with the proposals that came in here along this line we needed to give recognition to this problem. We thought we were making only the declaratory statement calling the attention of the people of the state of Michigan to the importance that is involved here. So, therefore, I do defend and I want to support the proposal and hope you will vote for it."

* * *

"MR. HATCH: Mr. Figy has stated my position on this. Personally, I feel that if there is great concern over the word 'paramount,' I don't think that the amendment actually changes the intent of the committee, but our purpose in using this language was to point out that there is a paramount problem here and will be a paramount problem here unless something is done about it. I will oppose the amendment and would urge the committee to defeat it."

* * *

"MR. MILLARD: * * * The state is concerned about the air, water, and natural resources of the state, and I certainly think that paramount adds a great deal to this amendment. I would call your attention to the fact that there are several states that have these constitutional provisions. California has a very strong 'paramount public interest' provision. Minnesota has a strong 'public interest' theory of water use and conservation. So that this is nothing unusual, and we are only using words that call attention that the state is vitally interested. It is totally interested, more than any one citizen. It has the chief and supreme concern in the natural resources and these should be protected. I think that the committee proposal should stand the way it is and I certainly ask you to vote against the amendment."

* * *

"MR. JONES: Mr. Chairman, fellow delegates, I would also urge you to defeat the amendment that is on the wall before you and retain the word 'paramount' because this does emphasize to the people in our state that we should be very much concerned about the natural resources of this state, also the purity of the air and our water. Thank you."[11]

The Shackleton amendment was not adopted.[12]

Thereupon, Mr. Iverson offered an amendment striking out:

"The state holds a paramount interest in the air, waters, and natural resources of the state, in the interest of the health, safety, and welfare of the people."[13]

The salient arguments pro and con were:

"MR. KUHN: Mr. Chairman and members of the committee, I wholeheartedly endorse the amendment by Mr. Iverson. To me, I

[11] Ibid, p. 2608.
[12] Ibid, p. 2609.
[13] Id.

would be more than scared about the word 'paramount' and the first sentence. I think it goes way beyond our thinking tonight and we must think about 50 years from now and who might be interpreting this, and I worry about the property rights of the individual and so many other rights, that it is imperative that we vote yes on the amendment.

* * *

"MR. JONES: Mr. Chairman and fellow delegates, I rise to urge the defeat of the amendment that is on the wall for the simple reason that in the first sentence we set forth the fact that the natural resources, the air and water of our state, are of primary concern to all the people, and without this the rest of it becomes direction to the legislature. Therefore, I urge its defeat."[14]

The Convention, sitting as the Committee of the Whole, refused to adopt Mr. Iverson's amendment.[15]

An amendment was sponsored by Mr. Norris inserting the word "public" after the word "paramount" so that the language would read:

"The state holds a paramount public interest in the air, waters, and natural resources of the state * * *."[16]

This amendment was adopted.[17]

But the dispute over the insertion of this proposal into the body of the Constitution was brought into sharp focus by an amendment submitted by Mr. Hutchinson to strike the entire committee proposal No. 125. In support of this amendment he stated:

"Mr. Chairman, at the beginning of this debate I tried to shock you because I feel that the matter before us is extremely important. Now, please don't misunderstand me. I am not opposed to the conservation of natural resources. I understood the chairman of the committee, Mr. Millard, to say that it is the intent of the committee to simply memorialize the legislature, but nevertheless you say in this proposal, in line 11, 'The legislature shall enact appropriate legislation to protect the air, waters, and other natural resources of the state . . .' and in previous times whenever you have used that word 'shall' you say that is a mandate. Sometimes you have even gone so far as to say: well, you know you can't mandamus the legislature. You have gone so far as to say that if a member of the legislature would fail to perform as you say he 'shall' he would be in violation of his constitutional oath. Some of you have gone that far. Now, if it is the intention of this proposal simply to memorialize the legislature, the use of the word 'shall' goes too far.

"The insertion of the word 'public' before 'interest' cures nothing. What you say now is the public interest, that is to say, the state's interest. Of course, the state only has a public interest. It is the only

[14] Id.
[15] Id.
[16] Id.
[17] Ibid, p. 2610.

interest that the state would have. You haven't cured anything here. The public interest is paramount and Mr. Norris says: well, all this is a statement of the police power. But it is in shockingly broad language. I call your attention to the fact of the conjunctive use of the word 'or' between 'impairment' and 'destruction' in line 14. Remember that you are writing a constitution and remember also that while, perhaps, I hope, this is not at all self executing, that just what Mr. Cudlip said is so true; this is a statement in the constitution of Michigan to be read with other constitutional provisions. I don't think that it is going too far to say that as an illustration of how far this statement goes that the state holds a public, paramount public interest in the air I breathe and the water I drink. It holds a paramount public interest in that and the legislature shall enact appropriate legislation to protect the air against —you say against pollution. Well, that is all right. But you say also against destruction without pollution. * * *"[18]

In debate on this amendment, Mr. Yeager said:

"* * * We had very accurate and, I think, very good testimony before our committee on the severe problems facing this state now and in the near future, and the far future, on the question of air and water pollution and the dissolution of our natural resources in this state. I say to you, that a proposal which directs the legislature to enact legislation to protect those vital elements of our civilization is neither fascistic nor is it socialistic, and I certainly urge the defeat of the Hutchinson amendment. * * *"[19]

Mr. Norris spoke pointedly against the amendment as follows:

"* * * I think basically we have 2 propositions: does this particular formulation belong in a constitution? I submit that it does. A constitution is a design for government, an ordering of values. It sets forth here a value upon the health, safety and welfare of the people in terms of preserving the air, water and natural resources of the state, and I think that we do proclaim by this constitution a high value on these matters, and it is germane to our concern.

"Secondly, the question of Mr. Hutchinson's amendment: it seems to me he is, in the semblance or guise of defending individual liberty, also defending a constitutional right to pollute or to impair or to destroy air, waters or other natural resources. I don't think he wishes to take that position. I am sure he is sympathetic with the idea of conservation, but in order to get conservation, in order to place an enjoiner upon the legislature to move ahead in the next several decades with regard to the kinds of problems that this convention foresees, this particular kind of language is necessary, and it seems to me that the Hutchinson amendment ought to be defeated and we ought to merge, move ahead with this particular formulation, and I would urge the defeat of the Hutchinson amendment."[20]

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[18] Official Record, Constitutional Convention 1961, Vol. 2, p. 2610.
[19] Ibid, p. 2611.
[20] Id.

Mr. J. B. Richards commented:

> "* * * If you folks think that this is something that is brand new, forget it. This is so old that your legislators can tell you that this is not needed, that this is legislative because it is already, almost all of it, enacted into laws, and that there are more laws being developed along this line. It just seems to me we are telling the legislature to do something that they are interested in, that they have been working on for many, many years, and we are acting like we think they are a bunch of boys who don't know what they are doing. I assure you that they have been working on these propositions for years and they are probably doing it more intelligently than we will do if we accept this proposal. So, definitely, I am for Mr. Hutchinson's amendment."[21]

The Convention did not adopt the Hutchinson amendment.[22]

Immediately following the rejection of the Hutchinson amendment, Mr. Durst submitted an amendment to insert after the word "shall" the words "have power to" so that the language would read:

> "The legislature shall have power to enact appropriate legislation * * *."[23]

In support of his amendment Mr. Durst stated:

> "Mr. Chairman and members of the committee, I think what Mr. Prettie had to say here a moment ago about the way we have used 'shall' and 'may' is important in that we have used 'shall' when we want the legislature to act. Now, I realize that the committee does want the legislature to act in this matter, but you are calling upon them to act as problems arise. You are not asking that they enact something immediately upon the adoption of this constitution. I think we should not be too free in the use of the word 'shall;' when we use it we should mean it, and I think this amendment would correct the problem and still maintain the intent of the amendment."[24]

This amendment was not adopted. The proposal with two amendments passed and was sent to the Committee on Style and Drafting.[25] The proposal in revised form[26] was adopted by the Convention.[27]

The address to the People by the delegates to the Constitutional Convention stated:

> "This is a new section recognizing public concern for the conservation of natural resources and calling upon the legislature to take appropriate action to guard the people's interest in water, air and other natural resources."[28]

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[21] Ibid, p. 2611.
[22] Ibid, p. 2612.
[23] Ibid.
[24] Ibid.
[25] Ibid, p. 2618.
[26] Ibid, p. 2900.
[27] Ibid, p. 3115.
[28] Ibid, p. 3377.

The Supreme Court, in construing Sec. 9 of Art. 2 of the 1963 Constitution (initiative and referendum) in *Michigan Farm Bureau v. Secretary of State,* (1967), 379 Mich. 387, in a per curiam opinion, said at p. 390 with reference to its duty in construing that provision:

> "That duty is to ascertain as best the Court may the general understanding and therefore the uppermost or dominant purpose of the people when they approved the provision or provisions thus brought up. To quote Mr. Justice Story:
>
> " 'Constitutions are not designed for metaphysical or logical subtleties for niceties of expression, for critical propriety, for elaborate shades of meaning, or for the exercise of philosophical acuteness or judicial research. They are instruments of a practical nature, founded on the common business of human life, adapted to common wants, designed for common use, and fitted for common understandings. The people make them, the people adopt them, the people must be supposed to read them, with the help of common sense, and cannot be presumed to admit in them any recondite meaning or any extraordinary gloss.' (1 Story, Constitution [5th ed], § 451, p. 345); and Mr. Justice COOLEY (from May v. Topping 65 W. Va. 656, 660 [64 S.E. 848]:
>
> " 'A Constitution is made for the people and by the people. *The interpretation that should be given it is that which reasonable minds, the great mass of the people themselves, would give it.* "For as the Constitution does not derive its force from the convention which framed, but from the people who ratified it, the intent to be arrived at is that of the people and it is not to be supposed that they have looked for any dark or abstruse meaning in the words employed, *but rather that they have accepted them in the sense most obvious to the common understanding,* and ratified the instrument in the belief that that was the sense designed to be conveyed." (Cooley's Constitutional Limitations [6th ed], 81.)' "

It is evident that the people must have understood that this language was put into the Constitution for the deliberate purpose of declaring what the public policy of the State would be with respect to the protection of air, water, and other natural resources of the State and that the legislature was commanded to carry out that policy. Indeed, this command is spelled out in positive language, namely, that "the legislature shall provide for the protection of the air, water and other natural resources of the state from pollution, impairment and destruction."

From the course of the constitutional Convention's discussions and actions it is also patently clear that by placing this new provision into the constitution the public policy expressed therein was intended to be controlling and that it was incumbent upon the legislature to carry it into effect.

Although the language of this provision does not expressly prohibit the pollution, impairment and destruction of the water and other resources of the state, such a prohibition is necessarily implied from the positive command to protect the "air, water and other natural resources of the

state from pollution, impairment and destruction." In enacting a law sanctioning the discharge of pollutional substances resulting in the impairment and destruction of any of the water or other natural resources of the State, the legislature would be violating the constitutional, and thus supreme, public policy declared in Section 52 of Art. IV.

This principle of constitutional construction, was stated in *People v. Draper* (1857) 15 N.Y. 532, 544[29] as follows:

> ". . . Every positive direction contains an implication against anything contrary to it, or which would frustrate or disappoint the purpose of that provision. . ."

In the case of *Board of Commissioners of Logan County v. State ex rel. Short* (1927), 122 Okl. 268, 254 P. 710, 712, the Court said:

> "The Constitution, of course, does not expressly inhibit the power the Legislature has assumed to exercise, but an express inhibition is not necessary. The affirmation of a distinct policy upon any specific point in a state Constitution implies the negation of any power in the Legislature to establish a different policy."

This case was cited in Opinion No. 4244, dated December 10, 1963[30] of this office.

Examination of the water resources act, being Act 245, P.A. 1929, as amended, supra, indicates that it is an Act to prohibit the pollution of any waters of the state and the Great Lakes and grants authority to the Commission to control said pollution. The questions which you ask must, therefore, be viewed in relation to the constitutionally declared public policy.

In response to your first question, the following is indicated. Section 5 of this act[31] authorized the Commission:

> " * * * to make regulations and orders restricting the polluting content of any waste material or polluting substance discharged or sought to be discharged into any lake, river, stream, or other waters of the state. It shall have the authority to take all appropriate steps to prevent any pollution which is deemed by the commission to be unreasonable and against public interest in view of the existing conditions in any lake, river, stream, or other waters of the state."

Section 8(b) of the act as last amended by Act 405, P.A. 1965[32] relating to the filing of new or increased use statements, also provides authority for the Commission to make orders:

> " * * * stating such minimum restrictions as in the judgment of the commission may be necessary to guard adequately against such unlawful uses of the waters of the state as are set forth in Section 6. * * *"

The unlawful uses of the waters of the state referred to in § 8(b) above are unmistakably set forth in § 6(a) of the act as last amended by Acts

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[29] Cited in Cooley's Constitutional Limitations (8th ed), Vol. 1, p. 177, n. 1.
[30] Report of Attorney General, 1963-1964, p. 258.
[31] C.L. 1948 § 323.5; M.S.A. 1961, Rev. Vol. § 3.525.
[32] M.S.A. 1968 Cum. Supp. § 3.528.

328 and 405[33] and the language of § 6(a) is positive in command. Said section unequivocally prohibits the discharge into the waters of the State of any substance which is or may become injurious to the values listed therein, including fish and aquatic life.

Section 6(a) of the act, supra, provides as follows:

> "It shall be unlawful for any person directly or indirectly to discharge into the waters of the state any substance which is or may become injurious to the public health, safety or welfare; or which is or may become injurious to domestic, commercial, industrial, agricultural, recreational or other uses which are being or may be made of such waters; or which is or may become injurious to the value or utility of riparian lands; or which is or may become injurious to livestock, wild animals, birds, fish, aquatic life or plants or the growth or propagation thereof be prevented or injuriously affected; or whereby the value of fish and game is or may be destroyed or impaired."

Your first question is addressed to the inquiry whether the powers granted the Commission in § 5 authorize the Commission to exercise its judgment and discretion as to the reasonable use of Hills Creek in the public interest insofar as that use involves the discharge into it of pollutional substances which will admittedly violate the provisions of § 6(a).

Section 6(a) of the water resources act[34] as presently amended, like § 6 of the act prior to amendment,[35] sets up the legislative standards by which the Commission is to be guided in carrying out its duties and powers under the act. The interpretation of §§ 5 and 6 in Attorney General's Opinion No. 0-3703 dated December 18, 1945[36] applies to the question you now ask. It was there said:

> "The general rule as to the discretion of boards or commissions in administering a law enacted under the police power, may be stated as follows:
>
> '* * * it is impossible for the legislature to deal directly with the host of details in the complex conditions on which it legislates, and when the legislature states the purpose of the law and sets up standards to guide the agency which is to administer it, there is no constitutional objection to vesting discretion as to its execution in the administrators.' 42 Am. Jur. 'Public Administrative Law,' § 45; *People v. Soule,* 238 Mich. 130; *Argo Oil Corporation v. Atwood,* 274 Mich. 47; *Arms v. Ayer,* 192 Ill. 601, 58 L.R.A. 277.
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> * * *
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> "Act No. 245, Public Acts of 1929, supra, in section 6, does provide a standard for the waters of the state, providing that it is unlawful for any person to discharge pollution that will tend to destroy fish life or be injurious to public health. Section 5, in providing that the Commission may establish local standards of pollution of waters

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[33] M.S.A. 1968 Cum. Supp. § 3.526(a).
[34] Act 245, P.A. 1929, as amended, supra.
[35] C.L. 1948 and C.L.S. 1961, § 323.6; M.S.A. 1961 Rev. Vol. § 3.526.
[36] Report of Attorney General 1945-1946, p. 549.

in relation to the use to which they are or may be put, simply authorizes the Commission to apply the standard set up by the act to local waters, after investigation."

See, also, Attorney General's Opinion No. 3352, October 8, 1958, with reference to legislative regulations.[37]

It is, therefore, my opinion that § 5 does not authorize the Commission to enter an Order which will permit pollution of any stream which in its judgment or upon admitted facts will be in violation of the legislative standards set forth in § 6(a). Moreover, the language of § 5 cannot be construed as empowering the Commission to issue an order which patently would be in derogation of the Constitutional policy of § 52, Art. 4, Michigan Constitution of 1963. The proposed Order referred to in your first question is prompted by a new use application under § 8(b), which section by its very terms refers specifically to § 6(a). For these reasons, it is my opinion that the answer to your first question is that the proposed Order referred to therein is illegal in that it permits unlawful pollution of Hills Creek.

Questions 2, 3 and 4 which you ask require consideration of the meaning and purpose of the following provisions of § 12 of the act as last amended by Acts 328 and 405, P.A. 1965, relating to certain iron and copper mining operations:

> "* * * This act shall not be construed as applying to copper or iron mining operations, whereby such operations result in the placement, removal, use or processing of copper or iron mineral tailings or copper or iron mineral deposits from such operations being placed in inland waters on bottom lands owned by or under the control of the mining company and *only water which may contain a minimal amount of residue as determined by the water resources commission resulting from such placement, removal, use or processing being allowed or permitted to escape into public waters;* or applying to the discharge of water from underground iron or copper mining operations subject to a determination by the water resources commission." (Emphasis supplied)

From a study of the entire Act, I conclude that by the quoted language in § 12, the legislature intended to create some limited exceptions to the provisions of the water resources act.[38] From the underscored language of the above quotation, it is assumed that the legislature intended the Water Resources Commission would retain some authority over the waters of the state affected by the copper and iron mining operations therein described. The language of this section either in itself or read with other provisions of the water resources act is ambiguous and contradictory. It will, I believe, require construction under applicable rules of statutory construction whenever the Act is sought to be applied to a specific fact

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[37] Report of Attorney General 1957-1958, Vol. 2, p. 246.

[38] Act 245, P.A. 1929, as last amended by Act 405, P.A. 1965, C.L. 1948 and C.L.S. 1961 §§ 323.1 et seq., M.S.A. 1961 Rev. Vol. and 1968 Cum. Supp. §§ 3.521 et seq.

situation. Under these circumstances, I can only answer the second question you asked as to the constitutionality regarding the so-called "exceptions" in § 12 by referring to certain controlling rules of statutory construction and basic constitutional principles which will serve as a guide to the interpretation and application of this section.

The above quoted language was added to the water resources act in the 1965 amendment,[39] subsequent to the 1963 Constitution. The legislature is presumed to have knowledge of all applicable constitutional provisions and to have enacted this amendatory act to withstand constitutional objections. *Attorney General v. Detroit United Railway* (1920), 210 Mich. 227, 256. One aspect of this presumption has been stated by Mr. Justice Butzel in *Sullivan v. Michigan State Board of Dentistry* (1934), 268 Mich. 427, as follows:

> ". . . Even if the law could be construed in two ways, one consistent with the constitutionality, and the other inconsistent therewith, the former will be considered as the one presumptively intended by the legislature. *Motz v. City of Detroit,* 18 Mich. 495; *Grand Rapids Booming Co. v. Jarvis,* 30 Mich. 308; *Attorney General v. Railway Co.,* 210 Mich. 227."

The rule is stated in *Cady v. City of Detroit* (1939), 289 Mich. 499, p. 505, as follows:

> "A statute will be presumed to be constitutional by the courts unless the contrary clearly appears; and in case of doubt every possible presumption not clearly inconsistent with the language and the subject matter is to be made in favor of the constitutionality of legislation. (citations omitted) Every reasonable presumption or intendment must be indulged in favor of the validity of the act, and it is only when invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution that a court will refuse to sustain its validity."

See, also, *People v. Dubina* (1943), 304 Mich. 363 and cases cited therein; *Ecorse v. Peoples Community Hospital Authority* (1953), 336 Mich. 490.

Consequently, the constitutionality of § 12 must be approached so as to give the fullest weight to the mandate envisioned by the people in § 52 of Art. IV. As has been previously explained, this constitutional provision imposes upon the legislature a duty to protect the air, water and other resources of the state from the ravages of pollution and to this extent it prohibits the legislature from enacting any law which, if carried out, would violate the constitutionally declared policy. Section 12, therefore, cannot be applied by you so as to result in pollution, impairment and destruction of the water resources, as well as other natural resources, of the State by any copper or iron mining operation, contrary to the provisions of Section 6(a) of the act.

Any construction or application of § 12 which, in effect, removes water resources of the State from the protective provisions of the Water Resources

[39] Act 328, P.A. 1965, reenacted in Act 405, P.A. 1965.

Act and which would exempt the copper and iron mining operations there referred to from the operation of the Act would in my opinion be violative of the policy declared in Section 52 of Art. IV of the 1963 Constitution.

Your proposed order does protect the waters of Lake Superior by imposing restrictions. To construe the excepting or restricting language of § 12 as depriving the Commission from exercising any authority with respect to the operations here involved, namely, dewatering of an underground copper mine, would deprive the Commission from imposing any restriction protective of the waters of Lake Superior. Such a construction would place the State in violation of the Federal Water Pollution Control Act.[40] If the Commission has power to regulate and control the proposed discharges as they enter the waters of Lake Superior, it likewise has power over the waters of Hills Creek as a water resources of the State of Michigan.

In answer to your second question, it is my opinion that to construe Section 12 of the water resources act as depriving the Water Resources Commission from controlling the pollution of the waters of the state in accordance with protective provisions of the act would be in contravention of the public policy declared in and voted into the Constitution of 1963 as expressed by Section 52 of Art. IV. Therefore, notwithstanding any other provision in the state constitution, the language of Section 12 of the water resources act should be applied by you in a constitutional manner through the imposition of such restrictions and requirements that would protect the waters and natural resources of Hills Creek guided by and in consonance with the other protective provisions of the Act.

Therefore, it is unnecessary to answer Question No. 2 with respect to the equality provision in the Constitution.

In answer to question 3, it is my opinion that the Commission may invoke any of the appropriate provisions of the water resources act in dealing with iron and copper mining operations, including §§ 7, 8(b) and 10 of the Act.

In answer to question 4, for reasons stated above, it is my opinion that the provisions of § 12 do not modify or restrict the Commission's authority to impose restrictions on waters discharged from underground iron and copper mining operations when a new use statement is filed pursuant to § 8(b), and in such event the provisions of § 6(a) are applicable.

FRANK J. KELLEY,
Attorney General.

[40] 33 U.S.C.A., §§ 466 et seq. (1957)