

We may conclude from the above that there is only one way properly to test the validity of a liquor referendum election; that method set forth in Section 4545 of the Revised Judicature Act. The Michigan Liquor Control Commission cannot set aside the results of an election. The validity of the election must be challenged in the manner set forth in Section 4545 of the Revised Judicature Act within 30 days of such election. Under Section 56 of the Michigan liquor control act, *supra*, the extent of the Liquor Control Commission's authority is to approve the restaurant, hotel or establishment in accordance with the provisions of the Michigan liquor control act. There is no authority expressed or implied in Section 56 of the Michigan liquor control act which repeals directly or by implication the provisions of Section 4545 of the Revised Judicature Act.

In O.A.G. 1949-50, page 554, the Attorney General pointed out that the results of a special election were invalid but, it may be noted, that he did not indicate therein the procedure to be followed in implementing this conclusion. Neither the Attorney General nor the Liquor Control Commission can set aside an election and the former opinion should not be so read.

FRANK J. KELLEY,  
*Attorney General.*

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**CONSTITUTIONAL LAW: Formal Sessions of Governing Boards.**

**COLLEGES & UNIVERSITIES: Formal Sessions of Governing Boards.**

Whenever the governing board of an educational institution of higher learning is convened in accordance with established rules of such body for the transaction of business, it must convene in public session to which the members of the public are to be admitted. Private or executive meetings not held in accordance with established rules or where no business of the board is transacted are not formal sessions. Such private or executive meetings should be discouraged.

No. 4676

August 13, 1969.

Hon. Phillip O. Pittenger  
State Representative  
The Capitol  
Lansing, Michigan

Dear Representative Pittenger:

You have requested my opinion on the following question:

May the governing body of an educational institution granting baccalaureate degrees hold closed or private or executive sessions without violating the Constitution?

Article VIII, Sec. 4 of the Michigan Constitution of 1963 provides:

"The legislature shall appropriate moneys to maintain the University of Michigan, Michigan State University, Wayne State Uni-

versity, Eastern Michigan University, Michigan College of Science and Technology, Central Michigan University, Northern Michigan University, Western Michigan University, Ferris Institute, Grand Valley State College, by whatever names such institutions may hereafter be known, and other institutions of higher education established by law. The legislature shall be given an annual accounting of all income and expenditures by each of these educational institutions. *Formal sessions of governing boards of such institutions shall be open to the public.*" (Emphasis supplied)

The answer to your question rests upon the interpretation of the phrase "formal sessions" appearing therein.

The last sentence of Article VIII, Sec. 4 of the Michigan Constitution of 1963 is a new constitutional provision. It has not been heretofore construed by any Michigan court nor interpreted by opinion of the Attorney General.

Resort may be had to the Address to the People and the Official Record of the 1961 Constitutional Convention in order to ascertain the meaning of the concluding sentence of Article VIII, Sec. 4, and particularly the term "formal sessions." *Burdick v. Secretary of State* (1964), 373 Mich. 578.

The framers of the Michigan Constitution of 1963 made the following pertinent comment in the Address to the People concerning the last sentence of Article VIII, Sec. 4:

"The concluding sentence of the section insures that formal sessions of the governing boards of such institutions will be open to the public."

*Official Record, Constitutional Convention 1961, Vol. II, page 3396.*

An examination of the Official Record of the Constitutional Convention reveals that the concluding sentence of Article VIII, Sec. 4 was added to Committee Proposal No. 98 through amendment of delegate White, who offered the following explanation:

"Actually, I think this amendment is self-explanatory. *Meetings of governing boards of the three major universities have been open to the public and news media only for the past ½ dozen years and that has been accomplished only after a long period of negotiations. As it stands, the public and news media are present only as a matter of sufferance. They are invited guests of the governing board, an invitation which could be, conceivably, withdrawn at any time. It seems to me that now that we are creating by constitutional enactment 7 more such governing boards, it would be appropriate that their formal meetings should be conducted in public sessions. I would urge your support of this amendment.*" [Emphasis supplied]

*Official Record, Constitutional Convention 1961, Vol. I, page 1187.*

The only other pertinent comment on the amendment was offered by Delegate Downs, who said:

"I would like to speak very strongly in favor of Delegate Ink White's amendment. I believe that the boards should be open to the

public as a matter of constitutional right. They are public business. The only possibility might be adding some clauses as we did in the legislative, unless public security demands otherwise, . . .”

*Official Record, Constitutional Convention 1961*, Vol. I, page 1187.

The amendment was adopted, *Official Record, Constitutional Convention 1961*, Vol. I, page 1187, and became the final sentence of Article VIII, Sec. 4 without further change.

From this debate it must be concluded that the framers of the constitutional language in question considered the term “session” and the term “meeting” as synonymous.

In *Ralls v. Wyand* (Okla. 1914), 138 Pac. 158, it was held that the meaning of the word “session” is the “sitting” of a body, competent to engage in transaction of business; the time during which it is convened and actually engaged in business. Thus, a session of a governmental body took place when a body was lawfully convened and in session for the transaction of business. *Burkelo v. County Commissioners, et al.* (Minn. 1888), 38 N.W. 108.

The term “formal” has been defined to mean the following of established form, custom, or rule. *Severson v. Sueppel* (Iowa 1967), 152 N.W. 2d 281, 284.

In construing the final sentence of Article VIII, Sec. 4 of the Michigan Constitution of 1963, we must give it the meaning the people intended it should have. *Lockwood v. Commissioner of Revenue* (1959), 357 Mich. 517, 555. A reasonable and practical interpretation should be sought so as to give effect to the intent and purpose of its framers and the persons who adopted it. *John Hancock Mutual Life Insurance Co. v. Ford Motor Company* (1948), 322 Mich. 209, 222.

Meaning and effect can be given to the last sentence of Article VIII, Sec. 4 by interpreting the phrase “formal sessions” as meetings or sittings of the respective governing bodies held in accordance with established rules of such bodies for the transaction of business.

Therefore, it is my opinion that whenever the governing board of an educational institution of higher learning is convened in accordance with established rules of such body for the transaction of business, it must convene in public session to which the members of the public are to be admitted. Private or executive meetings not held in accordance with established rules or where no business of the board is transacted are not formal sessions. Such private or executive meetings, however, are rarely necessary. And the spirit of our Constitution, the tradition of our democracy, and the need for public access to the workings of public institutions and agencies compel the conclusion they should be actively discouraged.

FRANK J. KELLEY,  
*Attorney General.*

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