tion should be considered as an exception to the general one. He also stated that the law did not favor repeals by implication. The Attorney General concluded that a conservation officer could obtain a warrant without the authorization of the prosecuting attorney.

It is clear, therefore, that the special statute relating to the director of conservation and his officers (now director of the Department of Natural Resources) should be given effect since repeals by implication are not favored and here there is no claer attempt to repeal by implication. See *Attorney General ex rel. Owen v. Joyce* 233 Mich. 619 (1926); *Mayor of Port Huron v. City Treasurer of Port Huron,* 328 Mich. 99 (1950); *McDonald v. Schnipke* 380 Mich. 14 (1968).

For the reasons stated, it is my opinion that approval of warrants by a prosecuting attorney in fish and game violations is not required when the complaint is signed by a conservation officer who also makes a request for the warrant. The district judge or magistrate may issue a warrant in such case without the prosecuting attorney's approval.

FRANK J. KELLEY,
Attorney General.

690905.1

RETIREMENT SYSTEMS: Judges—Retirement annuity of retired member.

CONSTITUTIONAL LAW: Impairment of contract for judges' retirement annuity.

A retired circuit judge who was a member of the judges retirement system during the time that the judges' retirement act contained the escalator clause providing a retirement annuity of one-half of the annual salary currently paid by the state to circuit judges but who becomes a retirant at a time when the legislature has repealed the escalator clause, is entitled to the benefits of the escalator clause and should draw a retirement annuity of one-half of the annual salary currently being paid by the state to circuit judges of the state.

No. 4677

September 5, 1969.

Mr. Lawrence L. Farrell
Executive Secretary
Judges' Retirement System
Stevens T. Mason Building
Lansing, Michigan 48926

You have requested my opinion on the following question:

Whether a retired circuit judge who was a member of the judges' retirement system during the time that the judges' retirement act contained the escalator clause providing a retirement annuity of one-half of the annual salary currently paid by the state to circuit judges, but who becomes a retirant at a time when the legislature has amended the judges' retirement act to repeal the escalator clause, is entitled to

the benefits of the escalator clause and to draw a retirement annuity of one-half of the annual salary currently paid by the state to circuit judges of this state?

Act 198, P.A. 1951, as amended, being M.C.L.A. § 38.801, et seq.; M.S.A. 1962 Rev. Vol. § 27.125(1) et seq., is known as the judges' retirement act. Under Section 11 of the judges' retirement act, supra, membership in the judges' retirement system shall consist of all judges, as defined in Sec. 2(b) of the act, who agree to become members of the retirement system.

Retirement annuities for members of the judges' retirement system are set forth in Section 14 of the judges' retirement act, supra. As originally enacted, Section 14 of the act provided, upon the retirement of a member, a retirement annuity of $4,500 a year. The legislature amended Section 14 of the act by means of Act 262, P.A. 1952 to increase the retirement annuity for members of the system who serve as justices of the Supreme Court to $7,500, but the retirement annuity for other members was retained at $4,500. The legislature next amended Section 14 of the act by means of Act 224, P.A. 1956 to provide a retirement annuity for members serving as justices of the Supreme Court to be one-half of the annual salary currently paid by the state to justices of the Supreme Court and to provide that for other members one-half of the annual salary being currently paid by the state to circuit judges, as provided therein. Thus, the so-called escalator clause was made part of the judges' retirement act in 1956. Section 14 of the judges' retirement act was last amended by Act 169, P.A. 1961 to repeal the escalator clause and to provide that the retirement annuity to be paid a member of the judges' retirement system shall be one-half of the salary paid by the state to him at the time of the member's retirement.

Your question relates to the amount of retirement annuity due a retired circuit judge who joined the retirement system when it was created in 1951, and who was a member of the retirement system when the legislature amended the judges' retirement act, first to insert the so-called escalator clause and then to repeal the so-called escalator clause. He became a retirant at a time when the judges' retirement act provided that retirement annuities to be paid a member shall be one-half of the salary paid by the state to him at the time of his retirement, rather than one-half the salary currently paid to circuit judges by the state.

The Michigan Supreme Court has held in *Campbell v. Judges' Retirement Board* (1966), 378 Mich. 169, that the voluntary membership of a judge in the Michigan judges' retirement system is contractual in nature. Vested rights acquired under such contract may not be destroyed by subsequent statutory amendments or state constitutional amendment without offending the United States Constitution. Article I, Section 10.

Mr. Jusice Dethmers in *Campbell v. Judges' Retirement Board,* supra, considered the question of the time of vesting the rights of members of the judges' retirement system, and said on page 180 of the opinion:

"In this case plaintiffs, who had been judges and contributing members of the judges' retirement system, elected to and did retire under the governing act. Under that act and particularly section 12

thereof, they, thereupon, ceased to be members of the system. *When they so retired and ceased to be members of the system, their contract was completely executed and their rights thereunder became vested.* These could not, thereafter, be diminished or impaired by legislative change of the judges' retirement statute. . . ." Emphasis supplied)

Mr. Justice Dethmers, on page 181 of the opinion, concluded:

"We hold that a valid contract was entered into between judges and the State, that the State's agreement thereunder to pay the judges certain benefits created vested rights for the judges upon their retirement, that these are enforceable and cannot be impaired or diminished by the State. *This should be deemed to include not only the benefits provided by statute at the time of entry into the contract and of retirement, but, also, those later added by statutory amendment.* The legislature may add to but not diminsh benefits without running afoul of constitutional prohibition against impairment of the obligation of a contract." (Emphasis supplied)

Mr. Justice Dethmer's opinion was signed by three other justices. In a separate concurring opinion, Mr. Justice Black, joined by Mr. Justice Kelly, said that he agreed specifically with Justice Dethmer's conclusion just above quoted.

In a dissenting opinion, Mr. Justice Souris agreed that the judges' retirement plan is contractual in nature, but that the rights of the members of the retirement system were to be determined on the basis of the judges' retirement act as it read when each of the members joined the retirement system. Moreover, the legislature could grant additional benefits to retired judges and by the same token it could rescind such benefits.

In a separate dissenting opinion, Mr. Justice Adams agreed that the relationship of a member of the retirement system in the state was contractual in nature, that the specific contract was the retirement act as it read at the time each judge became a member of the retirement system, but that the parties could amend their contract thereafter. Moreover, the legislature could, as a matter of grace, increase payments after a judge had retired and could also eliminate any such increase in the payments.

The two quotations from Justice Dethmer's opinion in *Campbell,* supra, seem to suggest an inconsistency as to the precise time when the rights of a member of the judges' retirement system vest. Such apparent inconsistency can be resolved by an examination of the facts in the *Campbell* case, supra.

In all there were 13 plaintiffs in *Campbell,* supra, all of which joined the retirement system when it became effective. Twelve of the plaintiffs retired at the time when the escalator clause was in the statute. However, the 13th plaintiff was a circuit judge who retired on December 31, 1953 at a time when Section 14 of the judges' retirement act provided for an annuity of $4,500 per year, and the so-called escalator clause had not yet been inserted in the judges' retirement act. Since all 13 plaintiffs were held by the majority of the Supreme Court in *Campbell,* supra, to be

entitled by their contract with the state to a retirement annuity of one-half the salary currently paid to circuit judges by the state, the holding of the six justices of the Michigan Supreme Court as to the 13th plaintiff was that he was entitled to the benefits of the escalator clause even though it was made a part of the judges' retirement act after the time of his retirement.

The Attorney General is constrained to follow the law as it has been interpreted by the Michigan Supreme Court. If the 13th plaintiff was entitled to the benefits of the escalator clause, even though it was not part of the judges' retirement act at any time from the date he joined the retirement system until he retired therefrom, such holding must mean a member of the judges' retirement system who was a member of the system at the time when the escalator clause was inserted in the statute, but who retired at a time when the escalator clause had been excised from the statute, is also entitled to the benefits of the escalator clause. Under the decision in *Campbell*, supra, it must be concluded that to deny him a retirement annuity of one-half of the salary currently being paid circuit judges by the state is to impair his contract with the state, contrary to Article I, Section 10 of the Constitution of the United States and Article I, Section 10 of the Michigan Constitution of 1963.

Therefore, it is my opinion that a retired circuit judge who was a member of the judges' retirement system during the time that the judges' retirement act contained the provision that retired circuit judge members are to receive a retirement annuity of one-half the salary currently being paid circuit judges by the state, is entitled by his contract with the state to receive a retirement annuity of one-half the salary currently being paid to circuit judges by the state even though the statute was amended prior to the time of his retirement to remove the so-called escalator clause and to provide a retirement annuity of one-half of the salary paid such member by the state at the time of his retirement.

FRANK J. KELLEY,
Attorney General.

690909.1

CONSTITUTIONAL LAW: Deposit of public funds in banks.

SAVINGS & LOAN ASSOCIATIONS: Deposit of public funds.

Deposit of public funds in federally chartered savings and loan associations is prohibited by Article IX, Sec. 20 of the Michigan Constitution of 1963.

No. 4674

September 9, 1969.

Hon. David S. Holmes, Jr.
State Representative
The Capitol
Lansing, Michigan

You have requested my opinion on the following question:

Can federally chartered savings and loan associations with deposit type accounts accept public funds?