

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?

Article IX, Sec. 20 of the Michigan Constitution of 1963 provides:

"No state money shall be deposited in banks other than those organized under the national or state banking laws. No state money shall be deposited in any bank in excess of 50 percent of the capital and surplus of such bank. Any bank receiving deposits of state money shall show the amount of state money so deposited as a separate item in all published statements."

Precisely the same constitutional language quoted above appeared as Article X, Sec. 15 of the Michigan Constitution of 1908.

The Attorney General has held in O.A.G. 1955-56, Vol. I, page 384, No. 2167, that Article X, Sec. 15 of the Michigan Constitution of 1908 prohibited the deposit of any state funds in a federal savings and loan association. This opinion concluded that federal savings and loan associations are not organized under the national and state banking laws, so they do not come under the classification of institutions in the Constitution which may receive deposits of state funds.

Opinion No. 2167 also contained a holding that such deposits of public funds would be violative of Article X, Sec. 13 of the 1908 Constitution, which prohibited the state from subscribing to, or be interested in, the stock of any company, association or corporation. Such conclusion was upheld by the Michigan Supreme Court in *Michigan Savings & Loan League v. Municipal Finance Commission* (1956), 347 Mich. 311, ruling that the placement of public funds in savings and loan associations constituted the subscription to, or the purchase of, stock in the federal savings and loan association, contrary to Article X, Sec. 13 of the Michigan Constitution of 1908.

In adopting Article IX, Sec. 20 of the Michigan Constitution of 1963, its framers evidenced no intent to include federally chartered savings and loan associations within the term "banks" appearing therein. This is shown conclusively by a study of the Official Record of the Constitutional Convention.

The Constitutional Convention of 1961 considered both the deposit of public funds in financial institutions and the prohibition of the investment of public moneys in common stocks as part of Proposal 37. Committee Proposal 37 contained a proposed Section (a) and (d), which read as follows:

"(a) No state money shall be deposited in banks other than those organized under the national or state banking laws. No state money shall be deposited in any bank in excess of 50 per cent of the capital and surplus of such bank. Any bank receiving deposits of state money shall show the amount of state money so deposited as a separate item in all published statements."

"(d) The state shall not subscribe to, nor be interested in the stock of any company, association or corporation, EXCEPT THAT FUNDS ACCUMULATED TO PROVIDE RETIREMENT OR PENSION BENEFITS FOR PUBLIC OFFICIALS AND EMPLOYEES MAY BE INVESTED AS PROVIDED BY LAW; AND EXCEPT THAT ENDOWMENT FUNDS CREATED FOR CHARITABLE

OR EDUCATIONAL PURPOSES MAY BE INVESTED AS PROVIDED BY LAW GOVERNING THE INVESTMENT OF FUNDS HELD IN TRUST BY TRUSTEES."

Official Record, Constitutional Convention 1961, Vol. 1, p. 766.

Mr. Brake, Chairman of the Committee on Finance and Taxation, submitted the following reasons in support of Proposal 37 (a) and (d):

"Sec. a. The first paragraph of the proposal dealing with state deposits in banks is section 15, article X of the present constitution unchanged. In the opinion of the committee and of the fiscal officers of the state it is adequate and satisfactory."

"Sec. d. Section 13 of article X of the present constitution, which is revised by the committee proposal, has the desirable object of preventing state ownership of private business. However, it has some other results which the committee believes are unduly restrictive. The development, since the adoption of the present constitution, of substantial public employee retirement funds and university endowment funds, has made necessary reexamination of the type of investments available for such funds. The committee believes that if these funds are to earn the best return and are to be protected against inflation, the legislature should have the power to permit, under appropriate restrictions as to quality and amount, investment of these funds (*but not other public funds*) in such things as share accounts in savings and loan associations, and high grade corporate securities." (Emphasis supplied)

Official Record, Constitutional Convention 1961, Vol. I, pages 766, 767.

Proposal 37 was approved on first reading without change. *Official Record, Constitutional Convention 1961, Vol. I, p. 770.* Proposal 37 (a) and (d) was approved by the Convention without further change and respectively became Article X, Sections 20 and 19.

Since Article IX, Sec. 19 permits the investment of funds of public retirement and pension systems in stock of any company as provided by law, the funds of public retirement or pension systems may be invested in the shares of savings and loan associations if duly authorized by the legislature.

Sec. 5(b) of the homeowners loan act of 1933, as amended, being 12 U.S.C.A. § 1464, authorizes savings and loan associations to receive deposits of funds.

The ruling of the Attorney General in opinion No. 2167, in light of the proceedings of the Constitutional Convention in adopting Article IX, Sec. 20 of the Michigan Constitution of 1963 and Article IX, Sec. 19 of the 1963 Constitution, is sound and must be followed. Therefore, in answer to your question, it is my opinion that the deposit of public funds of the state in federally chartered savings and loan associations is prohibited by Article IX, Sec. 20 of the Michigan Constitution of 1963. When authorized

by law, investment of funds of public retirement and pension systems in federally chartered savings and loan associations is lawful.

FRANK J. KELLEY,
Attorney General.

690929.2

CONSTITUTIONAL LAW: Freedom of speech of elected officers.

EDUCATION, STATE BOARD OF: Members.

STATE OFFICERS: Use of stationery.

First Amendment to the Constitution of the United States protects the right of public officials to express their views on controversial subjects.

Members of the State Board of Education may use stationery and other materials provided at state expense to communicate views on public issues.

No. 4647

September 29, 1969.

Mr. James F. O'Neil, Member
State Board of Education
Prudden Building
Lansing, Michigan

You have requested my opinion on the following questions:

1. Whether it is lawful for an elected state official to use stationery provided for by the state to communicate with other elected and appointed officials, both state and federal.
2. Whether it is lawful for an elected state official to use stationery furnished by the state to communicate congratulations to a citizen receiving a federal appointment.
3. Whether other materials and supplies of the Department of Education may be used to communicate to the public statements of individual members of the State Board of Education.

Since your questions are related, they will be considered together.

The office of member of the State Board of Education is a constitutional office created by the people in Article VIII, Sec. 3 of the Michigan Constitution of 1963. In this section of the Constitution the people have provided that the State Board of Education shall consist of 8 members who shall be nominated by party conventions and elected by the people at large for terms of 8 years as prescribed by law. The constitutional powers and duties of the State Board of Education are enumerated therein.

The statutory powers and duties of the State Board of Education are set forth in the appropriate provisions of Act 287, P.A. 1964, being M.C.L.A. § 388.1001 et seq.; M.S.A. 1968 Rev. Vol. § 15.1023(1) et seq. The statutory powers and duties of the State Board of Education are also enumerated in the various provisions of the school code of 1955, being Act 269, P.A. 1955, as amended, being M.C.L.A. § 340.1 et seq.; M.S.A.