

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

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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.

1968 Rev. Vol. § 15.3001 et seq., as well as other acts which need not be cited here. An examination of these various statutes fails to reveal any statutory restrictions upon the members of the State Board of Education in the use of stationery provided them by the state.

Under the executive organization of state government required by Article V, Sec. 2 of the Michigan Constitution of 1963 the legislature has created a department of education by means of Sec. 300 of Act 380, P.A. 1965, being M.C.L.A. § 16.400; M.S.A. 1969 Rev. Vol. § 3.29(300). Section 301 of Act 380, P.A. 1965, being M.C.L.A. § 16.401; M.S.A. 1969 Rev. Vol. § 3.29(301), provides that the head of the department of education is the state board of education established by the Michigan Constitution of 1963.

Act 307, P.A. 1969 makes appropriations for the department of education, including appropriations to provide compensation for members of the State Board of Education, as well as for supplies and materials. There can be no question that the purchase of suitable stationery for members of the State Board of Education is proper and appropriate expenditure under this act. Nor does the act contain any restriction upon use of stationery for members of the State Board of Education. However, answer to your questions is not posited solely upon the absence of appropriate statutory restriction. More important is a sound public policy which encourages, indeed requires, public officials to speak freely and openly upon important public questions of the day.

The highest court in the land has ruled in *Wood v. Georgia*, (1962), 370 U.S. 375, that elected public officials, as well as private citizens, have a federally protected right to freedom of speech guaranteed by the First Amendment to the Constitution of the United States. This freedom extended to written statements of public officials criticizing other public officials. In the *Wood* case, *supra*, an elected sheriff of a county issued a written statement to the local press in which he criticized the actions of a judge and in which he urged the citizens to take notice when their highest judicial officers threaten political intimidation and persecution of voters in the county under the guise of law enforcement. The sheriff also delivered a written statement addressed to and made available to members of the grand jury. The public official was found in contempt by the court conducting the grand jury. In reversing such decision the high court said:

“Men are entitled to speak as they please on matters vital to them; errors in judgment or unsubstantiated opinions may be exposed, of course, but not through punishment for contempt for the expression. Under our system of government, counter-argument and education are the weapons available to expose these matters, not abridgment of the rights of free speech and assembly. . .” (p. 389)

The court concluded that the utterances of the elected officials were entitled to be protected.

“The First Amendment envisions that persons be given an opportunity to inform the community of both sides of the issue under such circumstances.” (p. 391)

The court rejected the argument that the right to freedom of expression of an elected public official must be more severely curtailed than that of an average citizen.

"The petitioner was an elected official and had the right to enter the field of political controversy, . . . The role elected officials play in our society makes it all the more imperative that they be allowed freely to express themselves on matters of current public importance."
(p. 394)

Significant to your inquiries is also the decision in *Bond v. Floyd* (1966), 385 U.S. 116, where the United States Supreme Court held that the state may not impose a stricter standard to an elected legislator in the exercise of his First Amendment rights to freedom of speech than it would apply to its citizens. The First Amendment to the Federal Constitution forbidding the abridgment of freedom of speech protects expressions by elected public officials on controversial subjects. The First Amendment in a representative government has been held to protect the rights of elected officials to express their views on issues of policy with the widest latitude. It protects the giving of erroneous statements as well as statements criticizing public policy. The interest of the public in hearing all sides of a public issue cannot be advanced by extending more protection to citizens-critics than to elected officials.¹ Moreover, the court noted, elected officials have an obligation to take positions on controversial political questions so that their constituents can be fully informed by them and be better able to assess their qualifications for office.

Under these holdings it is abundantly clear that members of the State Board of Education elected by the people of this state have a right protected by the Constitution of the United States to communicate with other elected and appointed officials. This right extends not only to writing letters on controversial subjects, but as well to letters of congratulations to other public officials. Such holding recognizes the fact that persons elected to high public office by the people of this state are ultimately responsible to the people in the discharge of their high trust. The possible abuse of stationery furnished to elected state officials cannot outweigh the constitutional right of elected public officials to make their views known on controversial issues. Full and open debate and free exchange of ideas strengthen representative government. In the words of the United States Supreme Court in the *Bond* case, *supra*, the free expression of views by elected officials enables their constituents to better enable them to assess their qualifications for office.

There is likewise no bar to the use of materials and supplies by the department of education to furnish information to the public as to views of individual members of the State Board of Education. Indeed, in a representative government it is imperative that the members of the public be informed completely on all issues. It is noted that the legislature has for many years made appropriations for information officers in the various departments of state government.

¹ Citing, *New York Times v. Sullivan* (1964), 376 U.S. 254.

Therefore, it is my opinion that members of the State Board of Education have the right to use stationery provided by the state to communicate with other elected and appointed officials as well as citizens generally on matters of governmental concern. Materials and supplies of the department may be utilized to communicate the views of members of the State Board of Education to the public.

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Attorney General.

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RETIREMENT SYSTEMS: Use of retirement reserves to fund accrued liabilities.

CONSTITUTIONAL LAW: Use of retirement funds.

Retirement funds of public retirement systems accumulated since January 1, 1964 may not be used to finance unfunded accrued liabilities.

Public funding of financial benefits due public employees or officers for services rendered after January 1, 1964 is a part of the contract for such financial benefits and the contract cannot be impaired.

No. 4656

October 17, 1969.

Hon. James H. Heinze
State Representative
The Capitol
Lansing, Michigan

You have requested my opinion upon the following questions:

1. Is it possible under the Constitution and law of the State of Michigan for funds to be borrowed or otherwise obtained from the reserves accumulated for current liability subsequent to January 1, 1964 for the purpose of paying any part of the pensions earned by teachers or other state employees for services rendered prior to January 1, 1964?
2. If so, what would be the proper legal procedure to obtain such funds for this purpose?
3. If not, what constitutional amendment or amendments and what legal procedure would be required to enable the State to obtain funds from post-constitutional reserves to pay pensions earned prior to the new constitution?

In Article IX, Sec. 24 of the Michigan Constitution of 1963, the people have provided:

"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.*" (Emphasis supplied)