In view of the foregoing, it is my opinion that the water resources commission has authority to establish water quality standards for receiving waters to maintain existing water quality in said waters and to control and regulate waste discharges to conform to such standards when in the judgment of the commission such will prevent conditions which are now or which in the future may be contrary to public interests and well-being as enunciated by 1929 P.A. 245, as amended, supra, and Const. 1963, art. 4, § 52.

FRANK J. KELLEY,
Attorney General.

7106Z1.2

RETAIL INSTALLMENT SALES ACT: Mobile Homes.
USURY: Mobile Homes.
WORDS AND PHRASES: "Trailers"; "Mobile Homes".

Retail sellers of mobile homes may not charge a rate of interest in excess of the maximum set forth in the usury law since a mobile home is excluded from the provisions of the retail installment sales act and the motor vehicle sales finance act.

No. 4729 June 21, 1971.

Miss Dianne McKaig, Director
Michigan Consumers Council
525 Hollister Building
Lansing, Michigan

You have requested my opinion regarding whether the seller of a mobile home is a retail seller within the meaning of that term in the retail installment sales act, 1966 P.A. 224, as amended, M.C.L.A. 445.851 et seq.; M.S.A. 19.416(101) et seq.

You have advised that it has come to your attention that it is prevalent practice of the sellers of mobile homes to prepare and have a purchaser execute a retail installment sales contract which provides, among other things, a rate of finance charge or time/price differential commensurate with the rate set forth in section 7 of the retail installment sales act, M.C.L.A. 445.857; M.S.A. 19.416(107), when purchasing a mobile home.

The retail installment sales act defines "goods" which are regulated by the act in the event they are sold on an installment plan. This definition of "goods" appears in section 2(a) of the act and excludes from its coverage "motor vehicles". See M.C.L.A. 445.852; M.S.A. 19.416(102). "Motor vehicles" are then defined by section 2(c) of that act as follows:

> " 'Motor vehicle' means any self-propelled device in which, upon which or by which any person or property is or may be transported or drawn upon a public highway, including all tractors, motorcycles, all trailers and semi-trailers, buses, trucks, power shovels, road machinery, agricultural machinery and other machinery not designed primarily for highway transportation, but which may incidentally transport

persons or property on a public highway, and including such devices which move upon or are guided by a track or travel through the air."

The question, therefore, arises whether the term "trailer" includes "mobile homes" within the definition of "motor vehicles" in the retail installment sales act.

A "mobile home" is defined by section 30(a) of the Michigan vehicle code, 1949 P.A. 300, M.C.L.A. 257.30(a); M.S.A. 9.1830(1), as follows:

" 'Mobile home' means a vehicle which can be drawn on a highway and is used exclusively for residential or camping purposes."

The definition of "trailer coach" in the vehicle code, supra, at section 74, M.C.L.A. 257.74; M.S.A. 9.1874, states:

" 'Trailer coach' means every vehicle designed or used for dwelling or camping purposes or exclusively for camp living and drawn behind a motor vehicle."

Courts of other states, when faced with the problem of whether the word "trailer" includes a mobile home, have generally concluded that the concept of a trailer does include a mobile home. For example, in *Village of Harriman v. Kabinoff,* 243 N.Y.S. 2d 210 (S. Ct. Orange County 1963), the New York court held that a mobile home is, by definition, a moveable residence akin to the definition of "trailer" found in Webster's Third New International Dictionary and therefore within the compass of a village ordinance requiring permits for the maintenance of "automobile trailers" within the village limits.

In *City of Astoria v. Nothwang,* 351 P. 2d 688 (Oregon S. Ct., 1960), the Oregon Supreme Court also concluded that a mobile home is a trailer within the meaning of a city ordinance prohibiting the parking of trailer houses within the city limits.

In *Jones v. Beiber,* 103 N.W. 2d 364 (Iowa S. Ct., 1960), the Iowa court ruled that a trailer built on a permanent foundation is as much a dwelling as a house. The court in *Beiber* opined that a restrictive covenant requiring buildings be of a permanent character prohibited the placing upon the premises a mobile home or trailer even though it was intended as a dwelling when that home was simply placed upon concrete blocks and siding placed over the blocks to camouflage their existence. In so holding, the court said:

"Giving the word 'trailer' its usual and common meaning, as above set forth, and notwithstanding its transformation as is above set forth, it still retains its basic characteristic of 'being designed to be hauled'. It still remains 8 feet wide and 51 feet long and thus stands in marked contrast to the type of a building that is 14 feet by 18 feet in dimension. It was conceded to have originally been a trailer and, within the purview of the restrictive convenant, it still remains a trailer. . . ." 103 N.W. 2d 364, 366.

Other courts have upheld the validity of zoning ordinances prohibiting house trailers from certain residential areas and extended that prohibition to mobile homes as they are automobile trailers used as residential dwell-

ings. See *Connor v. West Bloomfield Township,* 207 F. 2d 482 (Court of Appeals 6th Circuit, 1953).

In 1 O.A.G. 1957-1958, No. 3159, p. 510, the Attorney General, in determining the applicability of registration laws on trailer coaches, considered trailer coaches to be equivalent to mobile homes.

It is therefore my opinion that the definition quoted in the retail installment sales act of a "trailer" does include a "mobile home."

If, on the other hand, it be argued that a mobile home is not a "trailer" within the purview of section 2(c) of 1966 P.A. 224, supra, because Michigan vehicle code section 30(a) provides a separate definition for the term "mobile home," it will be noted that the term "goods" is defined in the retail installment sales act, in part, as "all tangible chattels personal when purchased primarily for personal, family or household use." M.C.L.A. 445.852; M.S.A. 19.416(102).

In *Artman v. College Heights Mobile Park, Inc.,* 20 Mich. App. 193 (1969), the Michigan Court of Appeals, relying upon *Land v. City of Grandville,* 2 Mich. App. 681 (1966), concluded at p. 198:

> "A trailer home is no less a home because it is mobile; it is as much a home or residence as one which is stationary.
>
> " 'Modern trailer parks afford modern living accommodations for many of the families in America today, and should not be classified other than dwellings or residences.' "

The Texas Criminal Court of Appeals in *Harden v. State of Texas,* 417 S.W. 2d 170 (1967), upheld the conviction of a defendant for the arson of a house, even though the defendant contended that the trailer that was burned was a mobile home and therefore not a house within the meaning of the Texas arson law since the trailer was mounted on blocks and used as a residence by the owner.

In *Morin v. Zoning Board of Review of the Town of Lincoln,* 232 A. 2d 393 (Rhode Island S. Ct., 1967), the court held that a mobile home permanently affixed to realty lost its character as a mobile home and therefore became a structure within the meaning of a local zoning ordinance and thus the owner was permitted to place that mobile home within a residential area.

Thus when a mobile home is affixed to realty and used as a residential premises, it is not a "tangible chattel personal."

It is therefore my opinion that a mobile home is a trailer within the meaning of that term used in the retail installment sales act and thus excluded from the coverage of the act. Where it is affixed to the realty so as to become a residential premises, it is not a tangible chattel personal. It is my further opinion that the financing of the sale of a mobile home may not be done in accordance with the provisions of the motor vehicle sales finance act, 1950 Ex. Sess. P.A. 27, M.C.L.A. 492.101 et seq; M.S.A. 23.628(1) et seq., because "trailers" are specifically excepted therefrom under section 2 of that act. It is my further opinion that financing of a mobile home is governed by the interest maximum of the Michigan usury

law. See 1966 P.A. 326, as amended, M.C.L.A. 438.31 et seq.; M.S.A. 19.15(1) et seq.

FRANK J. KELLEY,
Attorney General.

710923.3

SCHOOLS: Authority of a board of education to adopt a deficit budget or to operate at a deficit.

A board of education is prohibited by law from knowingly adopting a budget in which proposed expenditures exceed funds on hand and reasonably estimated anticipated revenues, including borrowed money to the extent the funds are borrowed in anticipation of either property tax or state school aid revenues to be received in the fiscal year in which such borrowing occurs.

A board of education is prohibited by law from operating at a deficit.

A board of education is operating at a deficit when its actual expenditures for a given fiscal year exceed funds on hand, actual revenues and sums which it has lawfully borrowed during the course of the fiscal year.

In the absence of concealment or fraud, board of education members are not personally liable on contracts made by them on behalf of the school district they serve.

A board of education of a second class school district borrowing money for school operating purposes in anticipation of the collection of taxes for the next fiscal year is limited to borrowing money for necessary operating expenses that could not reasonably have been foreseen and provided for in the tax levy for the current fiscal year.

No. 4673 September 23, 1971.

Hon. Garland Lane
State Senator
The Capitol
Lansing, Michigan

You have requested my opinion on the following five questions:

1. Can a Board of Education knowingly adopt a budget which calls for expenditures in excess of current year income plus balances and sums which it may lawfully borrow?

2. Can a Board of Education lawfully operate at a deficit?

3. When is a Board of Education operating at a deficit?

4. Are Board of Education members personally liable for obligations incurred by the Board in excess of its ability to pay if the obligations are otherwise the lawful obligations of the Board?

5. May a Board of Education of the second-class borrow for any temporary school purposes under M.S.A. 15.3158 regardless of whether the expenditures could have been 'reasonably foreseen' (see Act 202 of Public Acts of 1943, as amended)?