

the chairman of the board has expressed a willingness to maintain the confidentiality of the list.

You are therefore advised that the board of county commissioners is entitled to access to the list of recipients of welfare and public assistance upon request to the county department of social services with the procedural safeguards above set forth.

FRANK J. KELLEY,  
*Attorney General.*

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**CONSTITUTIONAL LAW:** Powers of State Board of Education over higher education.

**EDUCATION, STATE BOARD OF:** Powers to plan, coordinate and advise as to financial needs of higher education.

**GOVERNOR:** Appointment of temporary commission.

The legislature and the governor are without authority to establish a commission on higher education, even on a temporary basis, to plan, coordinate and to advise as to the financial requirements of public higher education, including all matters incidental thereto.

No. 4735

January 19, 1972.

Dr. John W. Porter, Chairman  
State Board of Education  
Lansing, Michigan

The State Board of Education has requested my opinion on the following question:

“(W)hether the Governor, by appointing the Commission on Higher Education and urging the Legislature to fund the operation, is unlawfully usurping the constitutional authority of the publicly elected State Board of Education.”

This question relates to the “SPECIAL MESSAGE TO THE LEGISLATURE ON EXCELLENCE IN EDUCATION—EQUITY IN TAXATION”, transmitted by the governor to the legislature on April 12, 1971. The special message may be found in the *Journal of the Senate* 1971, No. 42, pp. 586, 588, 591, and in considering the question, it would be helpful to quote the following portions:

*“SUMMARY OF PROPOSALS*

“In this special message to you, I am proposing, in order to further and to accelerate our orderly progress towards the achievement of our goals:

\* \* \*

“15. Appointment of a Commission on Higher Education to begin immediately to plan for upgrading of educational opportunity in

colleges and universities, as well as to produce a plan for effective coordination of all higher education institutions and programs.

\* \* \*

"In order to plan before we act, I will establish a Commission on Higher Education in Michigan. Its responsibilities will include:

- "1. To suggest goals and objectives of all post-secondary education in Michigan.
- "2. To assess the current and projected supply of, and demand for, educational services beyond high school.
- "3. To recommend effective patterns of governance and management for individual institutions and for state policy-making.
- "4. To develop recommendations for the financing of post-secondary education.

"This Commission, which I will announce shortly, will include about 20 members, with high level staff support.

"I strongly urge the Legislature to support my request for \$100,000 for the 1971-72 fiscal year to finance the operation of this Commission, which would be required to complete its work before the summer of 1972."

A plain reading of the quoted portions of the special message to the legislature indicates that the governor intends to establish a state commission on higher education and will request the legislature to appropriate moneys to finance the operation of the commission. Basically, this commission would be charged with the duties of planning, coordinating and recommending for the financing of higher education.

1931 P.A. 195, M.C.L.A. 10.51 et seq.; M.S.A. 3.21 et seq. empowers the governor to create special commissions to examine, study and inquire into all matters relating to the purpose for which the commission was created. Presumably the commission on higher education would be established by the governor under such act. It would be a unit of the executive office of the governor as provided by 1965 P.A. 380, § 11, M.C.L.A. 16.111; M.S.A. 3.29(11). We must also assume that the life of the commission would be less than two years. Otherwise, Const. 1963, art. 5, § 4 would apply. It provides:

"Temporary commission or agencies for special purposes with a life of no more than two years may be established by law and need not be allocated within a principal department."

Turning to your question we must assume, based upon a fair reading of the special message, that the commission on higher education would concern itself with public higher education.

Const. 1963, art. 8, § 3, provides in pertinent part as follows:

"Leadership and general supervision over all public education, including adult education and instructional programs in state institutions, except as to institutions of higher education granting baccalaureate degrees, is vested in a state board of education. It shall serve as the general planning and coordinating body for all public education, including higher education, and shall advise the legislature as to the financial requirements in connection therewith.

“\* \* \*

“The power of the boards of institutions of higher education provided in this constitution to supervise their respective institutions and control and direct the expenditure of the institutions' funds shall not be limited by this section.”

The people have conferred constitutional authority upon the constitutional body designated as the state board of education to generally plan and coordinate all public education, including higher education, and power to advise the legislature as to the financial requirements in connection therewith. The vesting of such constitutional powers in the state board of education compels the conclusion that it is beyond the power of the legislature and the governor to provide for the creation of a state commission on higher education and to give it powers of planning, coordinating and advising as to the financial needs of public higher education. A commission on higher education cannot assume to exercise authority vested by the Constitution solely in the state board of education. The people, speaking through their Constitution, have so decreed. See *State Board of Agriculture v Auditor General*, 226 Mich. 417, 426 (1924).

The general power to plan and coordinate public higher education and to advise the legislature as to the financial needs of the same, as well as all matters incidental thereto, are vested by the people only in the state board of education and in no other governmental body. Thus it is beyond the power of the legislature or the governor to establish a commission on higher education to exercise such powers even on a temporary basis.

Therefore, it is my opinion that neither the legislature nor the governor has authority to establish a commission on higher education, even on a temporary basis, to plan, coordinate and to advise as to the financial requirements of public higher education, as well as all matters incidental thereto.

FRANK J. KELLEY,  
*Attorney General.*

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**TOWNSHIPS: Ordinances.**

**LICENSING: Commercial Establishments.**

Township is without authority to enact ordinance requiring all commercial establishments per se to obtain a license or permit to operate each such commercial establishment on a yearly basis.

No. 4740

February 24, 1972.

Honorable Donald E. Bishop  
State Senator  
The Capitol  
Lansing, Michigan

By recent letter you have asked my opinion on the following question:

May a non-charter township under the regulatory power granted to it