resource, while not applicable to the situation posed by you, might be of assistance in the community dilemma.

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CONSTITUTIONAL LAW: Amendment of statutes.

STATUTES: Amendment.

An attempt by the legislature to amend an act by referring to it in a totally separate statute is violative of Const 1963, art 4, § 25.

Opinion No. 4828 November 20, 1974.

Mr. Allison Green
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In a recent letter to this office you requested advice concerning the effect of § 12 of 1972 PA 347, MCLA 282.112; MSA 13.1820(12), the Soil Erosion and Sedimentation Control Act, on the procedures prescribed by 1967 PA 228, MCLA 560.101 *et seq.;* MSA 26.430(101) *et seq.,* the Subdivision Control Act.

Section 12 of Act 347, *supra,* provides:

> "(1) After June 30, 1974, a person who makes and submits a preliminary plat pursuant to sections 111 to 118 of Act No. 288 of the Public Acts of 1967, as amended, being sections 560.111 to 560.118 of the Compiled Laws of 1948, shall attach a statement that he will comply with this act and the rules or an applicable local ordinance.
>
> "(2) After June 30, 1974, in addition to the statements in the proprietor's certificate on a final plat as required by section 144 of Act No. 288 of the Public Acts of 1967, as amended, being section 560.144 of the Compiled Laws of 1948, the proprietor's certificate shall include a certificate that he has obtained a permit from the appropriate county or local enforcing agency and will conform to the requirements of this act and the rules or an applicable local ordinance."

Your questions concerning § 12 of the Soil Erosion and Sedimentation Control Act are:

> "1. Does Sec. 12 of Act 347 legally amend Act 288, i.e. must the proprietor's certificate include a certificate that he has obtained a permit from the appropriate county or local enforcing agency and will conform to the requirements of this act and the rules or an applicable local ordinance?
>
> "2. Does your reply to question #1 also apply to other acts that may amend Act 288 by reference in the same or a similar manner?"

Article 4, § 25, of the Michigan Constitution of 1963 provides:

> "No law shall be revised, altered or amended by reference to its title only. The section or sections of the act altered or amended shall be re-enacted and published at length."

In the case of *Alan* v *Wayne County*, 388 Mich 210; 200 NW2d 628 (1972), the Michigan Supreme Court interpreted art 4, § 25, and discussed its effect upon legislation. The holding in that case is directly applicable to the questions which you have raised.

The question confronting the Court was whether 1948 PA 31, MCLA 123.951 *et seq.*; MSA 5.301(1) *et seq.*, amended 1933 PA 94, MCLA 141.101 *et seq.*; MSA 5.2731 *et seq.* Act 94, known as the Revenue Bond Act, contains certain sections which on their face preclude the amendment of the Act by the operation of other statutes:

> "[Sec. 2] . . . The powers conferred by this act shall not be affected or limited by any other statute or by any charter, except as otherwise herein provided. . . ." [MCLA 141.102; MSA 5.2732]
>
> "Sec. 11. The bonds authorized hereunder shall not be subject to any limitations or provisions contained in the laws of the state of Michigan, pertaining to public corporations or in the charters of public corporations, as now in force or hereafter amended, other than as provided for in this act." [MCLA 141.111; MSA 5.2741]

Section 11 of Act 31, known as the Building Authority Act, purported to create an exception to Act 94, § 11, which dealt with serial or term bonds.

The Court held that this attempted amendment of Act 94 was unconstitutional by reason of art 4, § 25. In reaching this conclusion, the Court reviewed numerous cases decided under previous Michigan Constitutions which contained provisions identical to art 4, § 25. In *Alan* the Court cited and adopted the rule which stems from the case of *Mok* v *The Detroit Building & Savings Association No 4*, 30 Mich 511 (1875). In the *Mok* case, the Court made the following statement concerning the purpose and effect of Const 1850, art 4, § 25, which is identical in form to Const 1963, art 4, § 25:

> " 'No one questions the great importance and value of provision, nor that the evil it was meant to remedy was one perpetually recurring, and often serious. Alterations *made in the statutes by mere reference, and amendments by the striking out or insertion of words, without reproducing the statute in its amended form, were well calculated to deceive and mislead, not only the legislature as to the effect of the law proposed, but also the people as to the law they were to obey, and were perhaps sometimes presented in this obscure form from a doubt on the part of those desiring or proposing them of their being accepted if the exact change to be made were clearly understood.* Harmony and consistency in the statute law, and such a clear and consecutive expression of the legislative will on any given subject as was desirable, it had been found impracticable to secure without some provision of this nature; and as the section requires nothing in legislation that is not perfectly simple and easily followed, and nothing that a due

regard to clearness, certainty and simplicity in the law would not favor, * * *.' " [*Alan, supra,* 388 Mich at p 273, citing *Mok, supra;* emphasis that of the *Alan* Court]

The Court also cited the case of *Clay* v *Penoyer Creek Improvement Co,* 34 Mich 204 (1876), which restated the rule of *Mok* as follows:

" '*The sections referred to must be treated as though they had been re-enacted at length in this act, and without any changes having been made therein. . . . A reference merely to a section of another statute, in this manner, can no more broaden it or enlarge its scope than could its literal reenactment in the new statute in the place it was designed to fill.* In neither case, without some change in the phraseology, [of the act referred to] can its provisions be materially enlarged, while it may very materially limit the effect of the act of which it has thus become a part. [Citations omitted].' " [*Alan, supra,* 388 Mich at 274, citing *Clay, supra;* emphasis that of the *Alan* Court]

In other words, except for some very limited and unusual circumstances, the only way the legislature may amend an act is to republish that act in an amended form. Any attempt by the legislature to amend an act by referring to it in a totally separate piece of legislation would be unsuccessful because it violates art 4, § 25, of the Constitution:

". . . [W]e hold that in the absence of specific legislative intent to amend or alter other statutes we will treat them as in existence and interpret them as they are written unaffected by subsequent statutes. If, on the other hand, it *is* intended to amend or alter those other statutes revealed . . ., then it should be stated specifically and those statutes must be amended or altered directly and republished as contemplated by Const 1963, art 4, § 25.

"There is nothing complicated, burdensome, unreasonable or obscure about what we say here today. If a bill under consideration is intended whether directly or indirectly to *revise, alter, or amend* the operation of previous statutes, then the constitution, unless and until appropriately amended, requires that the Legislature do in fact what it intends to do by operation." [*Alan, supra,* 388 Mich at p 285; emphasis that of the *Alan* Court]

Subsequent to the decision in *Alan,* the Michigan Supreme Court had further occasion to consider the effect of Const 1963, art 4, § 25, on legislation in *Advisory Opinion re Constitutionality of 1972 PA 294,* 389 Mich 441: 208 NW2d 469 (1973). In this case, both the Governor and the State Senate requested the Court to render an advisory opinion with respect to the constitutionality of 1972 PA 294. The Michigan legislature enacted Act 294 in order to amend the title of 1956 PA 218 and to add Chapter 31 to the Insurance Code of 1956. One purpose of the Act was to modify tort liability arising out of automobile accidents and to provide for no-fault automobile insurance coverage in the State.

Although Act 294 did not undertake to amend other statutes in force on its face, it was contended before the Court that the Act had the effect of amending other statutes by implication. As a result, it was argued that

Const 1963, art 4, § 25, was not complied with because the statutes which were amended by implication were not reenacted and republished at length. The Supreme Court rejected this argument and in the process of rejecting it the Court went beyond the *Alan* decision in clarifying the effect of Const 1963, art 4, § 25, on legislation:

> "The first consideration given to determining the meaning of constitutional language simply should be to read it. It is especially important that we do so in this matter before the Court because interpretations over the years seem to be leading away from the 'plain and simple language' of the section.
>
> "The language of § 25 is quite clear. It says succinctly and straightforwardly that no law (meaning statutory enactment) shall be revised, altered or amended by reference to its title only. The constitutional language then proceeds to state how it shall be done (*i.e.*, the section[s] of the act in question shall be amended by reenacting and republishing at length).
>
> "There are only two sentences in § 25. Although the second word is 'law', it is obvious from the reading of the entire section that 'law' means act or section of an act. Section 25 is worded to prevent the revising, altering or amending of an act by merely referring to the title of the act and printing the amendatory language then under consideration. If such a revision, alteration or amendment were allowed, the public and the Legislature would not be given notice and would not be able to observe readily the extent and effect of such revision, alteration or amendment." [389 Mich 441, 470; 208 NW2d 469, 476]

The Court went on to observe that a second consideration in determining the meaning of a constitutional provision is the analysis of precedent. One major case utilized by the Court in its analysis was *People* v *Mahaney*, 13 Mich 481 (1865). The *Mahaney* case involves substantially the same issues which were before the Court in the *Advisory Opinion re Constitutionality of 1972 PA 294* case, and the Court made the following observation with respect to *Mahaney*:

"Justice Cooley stated further in *Mahaney*:

> " 'This constitutional provision must receive a reasonable construction, with a review to give it effect. The mischief designed to be remedied was the enactment of amendatory statutes in terms so blind that the legislators themselves were sometimes deceived in regard to their effect, and the public, from the difficulty in making the necessary examination and comparison, failed to become apprised of the changes made in the laws.' (p. 497.)
>
> "*This citation indicates that another reason for the language in § 25 is to require that notice be given to the legislature and the public of what is being changed and the content of the act as revised, altered or amended.* . . . The language and content of 1972 P.A. 294 is entirely sufficient to give that notice.

"To continue the language from Mahaney at p. 497:

" 'An amendatory act which purported only to insert certain words, or to substitute one phrase for another in an act or section which was only referred to but not republished, was well calculated to mislead the careless as to its effect, and was, perhaps, sometimes drawn in that form for that express purpose. Endless confusion was introduced into the law, and the constitution wisely prohibited such legislation.'

"1972 P.A. 294 does not violate these standards set forth in this reference. It does not revise, alter or amend in such prohibited fashion." [389 Mich 441, 472-473; 208 NW2d 469, 477; emphasis added]

If the *Alan* case and the *Advisory Opinion re Constitutionality of 1972 PA 294* case are read together, it becomes clear that art 4, § 25, of the Michigan Constitution of 1963 is directed only at certain kinds of legislation which have the effect of amending statutes which are in force at the time the legislation is passed. Specifically, when the legislature desires to amend a particular act, it must reenact and republish those sections which are to be amended in the amended form. It may not amend an act by merely referring to it in a statute which is a part of a separate body of law:

"This analysis by Justice Cooley and the interpretation of the Citizens Research Council reinforce the determination that § 25 is directed at preventing undesirable conduct with respect to amendment of a particular act. It does not seek to correct tangential effects which the amendment, revision or alteration may have on those statutes not directly affected.

* * *

"We emphasize the philosophy that constitutional language must be given reasonable and practical interpretations. We must not extend and expand the wording out of its original context and meaning in order to respond to imagined or even real mischief." [389 Mich 441, 475, 476-477; 208 NW2d 469, 478, 479]

Thus, the answer to your first question is that § 12 of Act 347 does not legally amend Act 288. If the legislature wishes to require that Act 347 be complied with before a proprietor's certificate on a final plat may be obtained under Act 288, then Act 288 must be specifically amended to so provide. Furthermore, the reasoning and rule of the *Alan* case and its predecessors applies not only to the specific statutes involved in this opinion, but also to all other statutes in which the legislature attempts to amend existing statutes merely by referring to them in subsequent legislation. A statute may be amended only by reenactment and publication at length.

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