

it is known that at the time this act was written, the military record and report of separation were placed on the back of the discharge, and would have been recorded along with it. The implication is that the legislature must have intended that not only the discharge, but the report of separation and military service record be recorded, since that was the prevailing practice and would have been the result at the time.

It is an equally familiar and fundamental rule of statutory construction that as the intent of the legislature should be given effect, the statutes should be construed so as to give them validity and a "reasonable construction." *In re State Highway Commission*, 383 Mich 709, 714; 178 NW2d 923 (1970). Clearly, the "reasonable construction" in this case is to construe the act to include the recording of the report of separation and service record. Without a record of these documents the benefits they were intended to help provide for cannot be claimed. The certificate of discharge, which contains nothing but the name, serial number, rank and date cannot be used for these purposes and is essentially useless without the other documents, except to show the type of discharge received. It is therefore my opinion that the word "discharge" in MCLA 35.31, 35.32; MSA 4.1201, 4.1202 includes the report of separation and military service record.

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CONSTITUTIONAL LAW: Separation of Powers.

**DEPARTMENT OF STATE HIGHWAYS AND TRANSPORTATION:
Constitutional Powers.**

Although the State Highway Commission is a constitutional body with responsibility for operating the Department of State Highways and Transportation, its functions and powers are defined by law. It does not have plenary powers granted to it by the Constitution.

The legislature may impose funding controls through appropriation legislation but cannot assume administrative controls with respect to highway commission programs that would constitute an exercise of the executive powers of government.

Opinion No. 4873

May 2, 1975.

The Honorable Russell Hellman
Michigan State Representative
The Capitol
Lansing, Michigan

By letter dated March 19, 1975, you state that the Joint Capital Outlay Subcommittee at its meeting of March 13, 1975, discussed with Mr. John P. Woodford, Director, Department of State Highways and Transportation, possible subcommittee involvement with all construction programs under the Department of State Highways and Transportation. You ask whether

under the Michigan constitution the Joint Capital Outlay Subcommittee may legally extend additional informational requirements and funding controls over the State's highway, mass transit and airport construction programs.

Const 1963, art 5, § 28, established the Michigan highway commission by the following language:

"There is hereby established a state highway commission, which shall administer the state highway department and have jurisdiction and control over all state trunkline highways and appurtenant facilities, and such other public works of the state, as provided by law."

In OAG, 1971-1972, No 4713, p 3 (January 20, 1971) it was concluded that although the state highway commission is a constitutional body framers of the constitution contemplated that the powers by which the highway commission shall exercise its administrative control over the state highway department and state trunkline highways and such other public works of the state assigned to its administrative authority would be defined by the legislature.

1964 PA 286; MCLA 247.801 *et seq*; MSA 9.216(1) *et seq*, implemented this constitutional provision by granting to the highway commission authority in specific terms with respect to its constitutionally provided responsibilities concerning the highway department and state trunkline highways. 1964 PA 286, § 2; MCLA 247.802; MSA 9.216(2) abolished the legislatively created office of highway commissioner and provided that any statute in existence on the effective date of 1964 PA 286, *supra*, that makes reference to state highway commissioner shall be deemed to refer to state highway commission. The state highway commission succeeded to the authority and powers heretofore conferred upon the office of highway commissioner by the legislature.

Examples of legislative grant of authority are found in 1951 PA 51, § 1; MCLA 247.651; MSA 9.1097(1) which authorizes the state highway commissioner, now commission, to make and establish classifications or groupings of state trunkline highways as deemed necessary or desirable for the proper administration of the state trunkline highway systems. Additionally, the highway commission as successor highway authority of the state highway commissioner may from time to time in a manner prescribed by law make additions or deletions to and from the state highways system. 1951 PA 51, § 1a; MCLA 247.651a; MSA 9.1097(1a) requires that state trunkline highways shall be constructed, maintained and improved by the state highway commission in accordance with the provisions of the act.

Moreover, 1951 PA 51, § 11; MCLA 247.661; MSA 9.1097(11) constitutes a legislative mandate to the highway commission as to how the moneys allocated to the department of state highways shall be spent. Similarly, 1951 PA 51, § 10e; MCLA 247.660e; MSA 9.1097(10f) provides the priorities for the use of the general transportation fund allocated to the state highway commission for use in general transportation projects as provided for and described by 1951 PA 51, *supra*.

Although the highway commission is a constitutional body as opposed to the former office of highway commissioner which was a product of the legislature, the role of the legislature in respect of its control over highway matters has not been changed by Const 1963, art 5, § 28.

The Michigan Supreme Court in *Central Advertising Company v State Highway Commission*, 383 Mich 1, 4; 172 NW2d 432 (1969) stated:

"The Michigan State highway commission is a constitutional body, which operates the Michigan department of State highways. The function and powers of the commission are defined by law."

The legislature's role with respect to highways is also described in Const 1963, art 7, § 16, wherein it is specifically provided that the legislature may provide for the laying out, construction, improvement and maintenance of highways, bridges and culverts by the state and other units of government.

It is true that in OAG, 1955-1956, No 2127, p 262 (May 11, 1955) it was held that, although the legislature may impose fund controls and conditions in appropriation acts, it is without authority to interfere with the plenary power of the regents of the University of Michigan in administering to the affairs of the University of Michigan pursuant to the Const 1908, art 11, §§ 5, 8. And, in *Civil Service Commission v Auditor General*, 302 Mich 673; 5 NW2d 536 (1942), it was held that fund controls imposed upon the civil service commission through appropriation legislation were invalid because they interfered with the plenary power of the civil service commission.

However, unlike the civil service commission and the board of regents of the University of Michigan, the highway commission does not have such plenary powers granted to it by the constitution. Therefore, the legislature may give direction to the highway commission by statute and impose conditions in appropriation acts with reference to such appropriations, provided such conditions are not in conflict with other constitutional provisions.

In *Weinberg v The Regents of the University of Michigan*, 97 Mich 246; 56 NW 605 (1893) such conditions were those labeled as ones being deemed expedient and wise. However, this statement was considerably modified in the case of *State Board of Agriculture v Auditor General*, 226 Mich 417; 197 NW 160 (1924) where the court said at page 425:

"Clearly, in saying that the legislature can attach to an appropriation any condition which it may deem expedient and wise, the court had in mind only such a condition as the legislature had power to make. It did not mean that a condition could be imposed that would be an invasion of the constitutional rights and powers of the governing board of the college. It did not mean to say that, in order to avail itself of the money appropriated, the State board of agriculture must turn over to the legislature management and control of the college, or of any of its activities. This logically leads us to a consideration of the character of the condition attached to the appropriation involved in the instant case. Is it a condition that the legislature had power to make? . . ."

Whether a condition is one that the legislature has the power to make must be considered in relation to Const 1963, art 3, § 2, which states:

"The powers of government are divided into three branches; legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution."

Obviously, the legislature is not exercising powers of the executive in mandating the executive branch of government to furnish informational reports to the legislature concerning those programs for which the legislature has appropriated funds. However, if it is proposed that the Joint Capital Outlay Committee impose conditions with respect to the moneys appropriated to the highway commission whereby the committee would administratively control the projects and programs for which the money is appropriated, the performance of a function by the legislature would be involved, which function must be examined under the provisions of Const 1963, art 3, § 2, as to its validity.

In the case of *Michigan Civil Rights Commission v Clark*, 390 Mich 717; 212 NW2d 912 (1973) the court considered legislative involvement in the investigative affairs of the civil rights commission under Const 1963, art 5, § 29, which provides for legislative prescription of the manner by which the civil rights commission investigates alleged discrimination. The court said at page 726:

"The Legislature, although it may legislate with regard to the exercise of executive and judicial functions, may not prevent the executive or judicial branches from exercising their powers. Similarly, the Legislature, although it may legislate with regard to the CRC, may not do so in a manner which prevents the CRC from functioning effectively."

The court referred to *Wylie v City Commission*, 293 Mich 571, 582-583; 292 NW 668 (1940) which involved the separation of powers provision of Const 1908, art 4, along with two other cases, *People v Stickle*, 156 Mich 557, 563-564; 121 NW 297 (1909) and *Gray v Clerk of Common Pleas Court*, 366 Mich 588, 595; 115 NW2d 411 (1962).

In *State Racing Commissioner v Wayne Circuit Judge*, 377 Mich 31; 138 NW2d 764 (1966) the Michigan Supreme Court was concerned with the separation of powers doctrine in a case involving the retention of jurisdiction by a circuit judge over the future actions of the racing commissioner with respect to license granting. The court said at page 36:

". . . It is presumed that the racing commissioner, a public officer, will perform his duties properly, *Leach v. Racing Commissioner* (1954), 340 Mich 202, and a court may not with propriety, without violating our principles of the separation of governmental powers, article 3, § 2, Constitution of 1963, supervise a public official's contemplated performance of his duties, absent peculiar circumstances. . . ."

Accordingly, it is my opinion that the highway commission's functions and powers are defined by law, as contrasted to the plenary powers of such other constitutional bodies as the civil service commission and the

board of regents. The legislature may impose funding controls through appropriation legislation but it cannot assume administrative controls with respect to highway commission programs that provide for an exercise of executive powers of government by the legislature which would be in violation of the Const 1963, art 3, § 2.

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GREAT LAKES: Title to Submerged Lands.

WATERS AND WATERCOURSES: United States Navigational Servitude.

The navigable waters of the State are subject to the navigational servitude of the United States.

The consent of the State by gift, grant or sale is required if the United States is to acquire any proprietary right to the submerged lands of the Great Lakes, although the United States can exercise power of eminent domain in acquiring a proprietary interest in such lands.

Opinion No. 4871

May 22, 1975.

Commander
Ninth Coast Guard District
1240 East 9th Street
Cleveland, Ohio 44199

Attention: F. R. Grundman
District Legal Office

You have indicated the continuing objection of the United States Coast Guard to assertions by the Department of Natural Resources that the USCG must, prior to undertaking work in aid of navigation upon bottomlands of the Great Lakes, obtain permits issued by the Department under provisions of Michigan's Submerged Lands Act (1955, PA 247; MCLA 322.701 *et seq*; MSA 13.700(1) *et seq*). In particular, you have stated:

"[A] state does not have the power to require the Coast Guard to obtain a state permit when it is constructing facilities on the navigable waters of the United States which will reasonably promote the safety and welfare of navigation. . . ."

Discussions between my office and representatives of the Michigan Department of Natural Resources, however, has disclosed a related problem involving the title to submerged lands upon which Federal improvements in aid of navigation are made.

At the outset, I do recognize that navigable waters of this State are subject to the navigational servitude of the United States and that in exercising its rights reserved by that servitude, the United States is not subject to control, nor need it obtain the prior permission of the State of Michigan.