

In summary, 1939 PA 108, § 12, *supra*, is the controlling section of 1939 PA 108, *supra*, as to who can provide medical care in a non-profit medical care corporation. Medical care in a non-profit medical care corporation must be provided by persons enumerated in 1939 PA 108, § 12, *supra*. Since 1939 PA 108, § 12, *supra*, does not include doctors of optometry, it is clear that the legislators did not intend to include members of this profession as persons who may form a non-profit medical care corporation.

However, the legislature can, if it so desires, include optometrists within 1939 PA 108, § 12, *supra*, by passing appropriate legislation.

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COMPENSATION AND SALARIES: Cost of Living Allowance.

CONSTITUTION OF MICHIGAN: Civil Service Commission.

CIVIL SERVICE COMMISSION: Increases in Employee Compensation.

GOVERNOR: Budget Message.

BUDGET: Increase in Employee Compensation.

LEGISLATURE: Budget.

The Governor is not constitutionally mandated to transmit in his budget message to the legislature the estimated cost to the state of a cost-of-living allowance made by the Civil Service Commission as the constitution only requires that he transmit the increase as part of his budget message.

The legislature appropriates to each agency the sum of money it deems sufficient for the operation of that agency during the fiscal year but civil service employees are entitled to receive as compensation the amount fixed by the Civil Service Commission.

Opinion No. 4881

July 2, 1975.

Honorable Jerome T. Hart
State Senator
The Capitol
Lansing, Michigan 48901

In a September 20, 1974 opinion to Mr. C. J. Hess, the then Acting State Personnel Director, this office stated that the Michigan Civil Service Commission has the authority under Const 1963, art 11, § 5 to institute a cost-of-living allowance for classified state employees if that plan is based upon a fixed formula, with a maximum increase. On December 13, 1974 the Civil Service Commission adopted such a cost-of-living plan for fiscal year 1975-76. The plan adopted by the Commission and transmitted to the Governor to be included as part of the executive budget submitted to the Legislature, as required by Const 1963, art 11, § 5, provides:

"The Commission approves the concept of a cost-of-living plan for all classified employees as recommended by the Compensation Advisory Board *at an estimated cost of \$25,300,000*. Taking into consideration that increases in the compensation schedule could not be supported for July 1, 1975, the Commission instructs staff to design a C.O.L.A. Plan which provides four quarterly payments, rather than three as recommended by the Board. Such quarterly payments to be based on a 1¢ for each .4 change in the Consumer Price Index (C.P.I.) with a cap of not to exceed 9¢ for the first quarter, 18¢ the second quarter, 27¢ the third quarter, and 36¢ the fourth quarter of fiscal 1975-76. These payments will be made in lump sums at the completion of each quarter and will not be incorporated as part of the basic pay rates. . . ." [Civil Service Commission's Recommendation on Pay Package & Fringe Benefits 1975-1976, adopted December 13, 1974; emphasis added]

The Commission adopted this allowance pursuant to the power conferred upon it by Const 1963, art 11, § 5, which in part provides:

"The commission shall classify all positions in the classified service according to their respective duties and responsibilities, fix rates of compensation for all classes of positions, approve or disapprove disbursements for all personal services, determine by competitive examination and performance exclusively on the basis of merit, efficiency and fitness the qualifications of all candidates for positions in the classified service, make rules and regulations covering all personnel transactions, and regulate all conditions of employment in the classified service."

The Governor transmitted the cost-of-living plan to the Legislature as part of his budget message for the fiscal year 1975-76. In his budget message to the Legislature, the Governor made the following statement:

"In its decision regarding pay levels effective July 1, 1975, the Commission ordered a cost-of-living allowance (COLA) equal to 1¢ of pay raise per hour for each .4 point change in the Detroit-based CPI. Employee payments would be made quarterly. The COLA could not exceed 9¢, 18¢, 27¢, and 36¢, respectively, for each quarter beyond the base period. The COLA is not incorporated into the basic pay rates. *My budget recommendations are predicated on an 11 point change in the index which would cost an estimated \$365 per employee. The budget cost is \$19.7 million of which 73% is the general fund-general purpose share.*" [Budget Message of the Governor for the Fiscal Year 1975-76, p 24; emphasis added]

If the Governor's budget message, as quoted above, is compared to the Civil Service Commission's notice to the Governor, which is also quoted above, it becomes apparent that there are some differences between the action taken by the Civil Service Commission and the Governor's message to the Legislature. Specifically, the formula adopted by the Civil Service Commission establishes a 14.4 point increase in the Detroit CPI as the maximum CPI increase upon which COLA payments will be made. The

Commission estimates that the cost of such a plan for all present classified employees will be \$25,300,000. The Governor's budget recommendation, on the other hand, is predicated upon an 11 point change in the index at a budget cost of \$19.7 million.

Because of this discrepancy between the action of the Civil Service Commission and the Governor's budget recommendation, and because this is the first time that the Legislature has before it a cost-of-living allowance plan for State employees, you have requested that this office issue an opinion on the following questions:

"1. The Civil Service Commission submitted to the Governor a maximum budget figure of \$23.5 million; however, the Executive Office transmitted a maximum budget figure of \$19.7 million to the Legislature. Has the Governor violated his constitutional mandate by not transmitting the complete Civil Service recommendation as required by Article XI, Section 5 of the State Constitution?

"2. It appears as though the Governor's Office has decided that the C.P.I. will not increase at as high a rate as the Civil Service Commission anticipated; therefore, the Governor is recommending a lower budget figure. If the Legislature does not reject or reduce the recommended C.O.L.A. plan within 60 days by a 2/3 vote are they forced by law or constitution to budget the maximum as recommended by the Civil Service Commission? Have they accepted the Governor's recommendation? Could the Legislature make such a subjective decision and budget at an even lower rate while maintaining acceptance of the C.O.L.A. plan and formula? What are the Legislative options?"

The first question is whether the Governor violated Const 1963, art 11, § 5, by not transmitting the complete Civil Service Commission recommendation. In order to respond to this question, it is first necessary to consider the respective responsibilities of the Governor and the Civil Service Commission in that aspect of the budget-making process which deals with budgeting for the salaries of classified state employees.

As stated above, Const 1963, art 11, § 5, paragraph 4, confers upon the Civil Service Commission the power to fix rates of compensation for classified state employees. In the case of *Civil Service Commission v Auditor General*, 302 Mich 673; 5 NW2d 536 (1942), the Michigan Supreme Court construed an essentially identical provision in the Civil Service amendment to the 1908 Constitution to mean that only the Civil Service Commission may fix rates of compensation for classified employees. Const 1963, art 11, § 5, differs from its counter-part in the 1908 Constitution in that it confers a certain veto power on the Legislature. However, the 1963 Constitution does not confer any power upon the Governor to modify increases in rates of compensation recommended by the Civil Service Commission.

Const 1963, art 11, § 5, paragraph 6, provides that increases in rates of compensation authorized by the Commission become effective only at the start of a fiscal year. Paragraph 6 further provides that the Commission give prior notice to the Governor of any increases in rates of com-

pensation and that the Governor is then required to transmit such increases to the Legislature as part of his budget.

Careful examination of the Governor's budget message to the Legislature dealing with the cost-of-living allowance makes clear that the Governor did in fact transmit to the Legislature the formula adopted by the Commission for determining the quarterly cost-of-living allowances. The Governor also transmitted to the Legislature the maximum hourly allowances per employee per quarter set forth by the Commission. What the Governor did not transmit to the Legislature is the Commission's estimate of the cost of the plan. That is, the Governor recommended that the Legislature budget a lesser amount than the amount recommended by the Commission.

In light of the above analysis it cannot be said that the Governor violated the constitutional mandate of Const 1963, art 11, § 5, paragraph 6. He did in fact transmit to the Legislature the increases in rates of compensation adopted by the Civil Service Commission. The Governor was not required to transmit, as well, the budgeted amount recommended by the Commission for the payment of the cost-of-living plan.

However, the Governor did not in any way modify the COLA plan adopted by the Civil Service Commission because of his failure to transmit the Commission's maximum budget figure. If the Legislature adopts the maximum budget figure recommended by the Governor and the Consumer Price Index increases by more than 11 points during the next fiscal year, classified state employees will still receive allowances based on the actual increase in the CPI up to the maximum. Because enough money would not have been appropriated for this purpose, the Legislature could make a supplemental appropriation to meet the cost of the allowance or other expenses could be cut to meet the payroll requirements of classified employees.

Thus the answer to question No. 1 is that the Governor did not violate his constitutional mandate by not transmitting to the Legislature the maximum estimated cost figure submitted to the Governor by the Civil Service Commission since the fact that he did not transmit this figure in no way affects the formula adopted by the Civil Service Commission or the amount to be paid to State classified employees.

Your second question raises a number of issues concerning the Legislature's role in budgeting for increases in compensation for State employees. Const 1963, art 11, § 5, paragraph 6, provides in relevant part:

"Increases in rates of compensation authorized by the commission may be effective only at the start of a fiscal year and shall require prior notice to the governor, who shall transmit such increases to the legislature as part of his budget . . . *Within 60 calendar days following such transmission, the legislature may, by a two-thirds vote of the members elected to and serving in each house, reject or reduce increases in rates of compensation authorized by the commission. . . .*"
[Emphasis added]

Thus, paragraph 6 confers upon the Legislature the power to reject or reduce increases in rates of compensation authorized by the Commission. However, the Legislature must take such action within 60 calendar days

following the transmission of such increases to the Legislature by the Governor. Because the Legislature did not act within 60 calendar days to reduce or reject the cost-of-living plan adopted by the Commission, it can no longer do so. As a result, the plan adopted by the Commission will go into effect without change.

While the Legislature can no longer reject or reduce the cost-of-living plan adopted by the Commission, it is within the Legislature's discretion to appropriate as much as it chooses for the operation of state government. In the case of *Civil Service Commission v Auditor General, supra*, the Michigan Supreme Court made the following statement with respect to the Legislature's power to appropriate for compensation for state employees:

"We conclude that it is within the power of the legislature to fix the amount it will appropriate for personal services in any State department or agency; but by the 1940 Constitutional amendment the power is vested in the civil service commission to 'fix rates of compensation for all classes of (civil service) positions.' . . ." [302 Mich at 688]

Thus, the answer to your second question is that the Legislature must appropriate an amount to each agency that it deems sufficient for the operation of that agency during the fiscal year, but civil service employees are entitled to receive as compensation the amount fixed by the Civil Service Commission.

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ELECTIONS: Constitutional Amendment.

CONSTITUTION OF MICHIGAN: Amendment.

If a petition to amend the Constitution lacks a sufficient number of signatures up to and including the general election at which the Governor is elected, that petition dies and no petition signatures procured prior to that date can be considered. However, petition signatures procured after that election are valid for the duration of the gubernatorial term.

Opinion No. 4880

July 3, 1975.

Dear Senators and Representatives:¹

You have called my attention to a petition campaign being conducted to collect at least 10% of the total vote cast for Governor in the 1970 gubernatorial election in order to place a constitutional amendment limiting state taxes on the ballot. You specifically noted that the petition campaign was started on May 15, 1974 and at the date of your opinion request, approximately 162,000 signatures had been collected.

Your specific question concerns the validity of signatures obtained prior to November 5, 1974, which was the date of the November 1974 general

¹ The request for this opinion was signed by 50 members of the legislature.