that being the same millage levied upon all other segments of the plaintiff school district. To do otherwise would result in a nonuniformity of taxation which is violative of the Constitution and the settled law of this state. * * *"

Therefore, to obtain uniformity of taxation, a final levy of taxes using a uniform standard is necessary. If such final levy results in revenues which exceed the budgetary needs of the local units entitled thereto, those local units are at liberty to reduce their tax rates applicable to the next succeeding annual levy of taxes.

It would be well to quote from the Court of Appeals in *Presque Isle, supra,* in this regard:

"Mandamus is the appropriate remedy, *School District No. 9, Pittsfield Township, Washtenaw County* v. *Washtenaw County Board of Supervisors, supra,* and accordingly a writ of mandamus should issue ordering the balance of $87,560 to be spread upon the next tax roll of Presque Isle Township and returned to the plaintiff school district. *This amount will be credited to the school district as an amount on hand and will be deducted from its next budget and, therefore, will reduce uniformly the amount to be levied upon all taxpayers in the school district for the subsequent year.*" [Emphasis supplied] p 59 of Opinion

Based on the foregoing considerations, it is my conclusion that the final levy of ad valorem taxes is mandatory and the term "may," used in 1893 PA 206, § 39a(3), *supra,* must, in view of the controlling constitutional uniformity provision, be interpreted and applied as meaning "shall."

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MICHIGAN STATE POLICE: Pursuant to 1935 PA 59, § 6; MCLA 28.6; MSA 4.436, Michigan State Police have authority to enforce local ordinances.

Opinion No. 4878 August 13, 1975.

Col. George L. Halverson, Director
Department of State Police
714 S. Harrison Road
East Lansing, Michigan 48823

This letter is in response to your request for an opinion on the following two questions:

1. Do officers of the Michigan Department of State Police have authority to enforce ordinances enacted by municipal, county, and township boards of supervisors?

2. Do officers of the Michigan Department of State Police have authority to enforce ordinances for illegal parking, as prescribed in Act 78, PA of 1974?

In your letter, you cited 1935 PA 59, § 6; MCLA 28.6; MSA 4.436 which, in prescribing the powers and authority for the Michigan Department of State Police, states in part:

> "The commissioner and all officers of said department shall have and exercise all the powers of deputy sheriffs in the execution of the criminal laws of the state and of all laws for the discovery and prevention of crime and shall have authority to make arrests without warrants for all violations of the law committed in their presence including laws designed for the protection of the public in the use of the highways of the state, and to serve and execute all criminal process. It shall be their duty to cooperate with other state authorities and local authorities in the detecting of crime, apprehending of criminals, and preserving law and order throughout the state."

As you are aware, in a letter of February 28, 1952 to the Commissioner of the Michigan Department of State Police, former Attorney General Frank G. Millard held that the authority and powers of the Department derive solely from the above quoted statute, and that there is no statutory authority extending those powers to the enforcement of city or township ordinances. I believe the law should be re-examined.

It is observed that the statutory language "of the criminal laws of the state" and "for all violations of the law committed in their presence" includes violations of local ordinances.

In *Mixer* v *Supervisors of Manistee County*, 26 Mich 421 (1873), the court held that offenses against city ordinances were not criminal cases and the expenses incurred in arrests for such offenses were properly charged to the city and not the county. The court stated:

> "The term 'criminal cases,' used in the laws, refers to none but prosecutions under the state laws. . . . They resemble criminal cases only in being penal proceedings, but no offense is a crime which does not violate the law of the land." *Mixer* v *Supervisors of Manistee County, supra,* 424.

In *Fennell* v *Common Council of Bay City*, 36 Mich 185 (1877), the court held that fines collected for violations of city bylaws belong to the city and not the county, and then went on to state that municipal violations were not to be considered criminal conduct.

> "We have heretofore on more than one occasion intimated that the penal laws referred to in the state constitution were the laws of the state. The term *law,* as defined by the elementary writers, emanates from the sovereignty and not from its creatures. The legislature, and their enactments are the only instruments that can in any proper sense be called laws." *Fennell* v *Common Council of Bay City, supra,* 190.

However, in *People* v *Hanrahan,* 75 Mich 611, 42 NW 1124 (1889), the court elaborated on its position in *Fennell,* although without reference, when it said:

> "To declare what shall constitute a crime, and how it shall be punished, is an exercise of the sovereign power of the state, and is inherent in the legislative department of the government. Unless authorized by the Constitution, this power cannot be delegated by the Legislature to any other body or agency. . . . The Constitution has granted to the Legislature authority to delegate to a city or village the right to enact by-laws and ordinances . . . for the enforcement of good order . . . and for numerous other purposes . . . and, acting under this authority, the Legislature has conferred power upon the municipalities to enforce the observance of these ordinances by fine or imprisonment, or both." *People* v *Hanrahan, supra,* 619.

The court continued:

> "An ordinance, validly enacted, prohibiting certain acts under fines, penalties, or imprisonment, is, within the jurisdiction of the municipality enacting it, as much entitled to respectful obedience, and as much the law of the land for that locality, as a law enacted by the Legislature; and a person violating it commits an offense, and in one sense a crime, for which he may be sentenced, . . . To hold that such offenses are not to be classed as crimes would be to take away the power of the Legislature or municipalities from imposing a punishment. . . ."

The actual issue in *Hanrahan* was whether a city ordinance prohibiting the keeping of a house of prostitution was repealed by a subsequent state law prohibiting that same activity. While the court held that only if there was an inherent repugnance would there be repeal, it also stated that the Legislature could delegate authority to its governmental subdivisions to enact ordinances and that violations of these ordinances were criminal acts.

Seventeen years later, in *People* v *Smith,* 146 Mich 193, 109 NW 411 (1906), the court retreated slightly from its position in *Hanrahan* and emphasized its earlier holdings that prosecutions for violations of ordinances were not criminal in the same sense that violations of state statutes were criminal. Defendant in that case appealed his conviction of violating an ordinance of the City of Ionia which prohibited the sale of goods without a license and which provided a penalty of up to sixty days in jail. Holding that the statute allowing exceptions to be certified to the state supreme court before judgment, in criminal cases, does not apply to convictions under city ordinances, the court stated:

> "Prosecutions for violations of city ordinances are not criminal cases within the meaning of the term as used in the general laws of the State. *Jackson* v. *People,* 8 Mich. 262; *People* v. *Jackson,* 8 Mich. 110; *People, ex rel. Mixer,* v. *Board of Sup'rs of Manistee Co.,* 26 Mich. 422; *People, ex rel. Fennell* v. *Common Council of Bay City,* 36 Mich. 186; *Village of Vicksburg* v. *Briggs,* 85 Mich. 502." *People* v *Smith, supra,* 195.

And yet the court still acknowledged that ordinance violations were in a sense criminal when it continued:

> "And, while the proceedings are not criminal in the sense that they are in enforcement of general criminal laws, they do so partake of the

nature of criminal proceedings (*Village of Vicksburg* v. *Briggs, supra*), including a verdict of *guilty* or *not guilty,* as charged, that the practice of securing by way of findings a number of special verdicts is unwarranted.' *People* v *Smith, supra,* 195-196.

Thirty-two years later, in *People* v *Riksen,* 284 Mich 284, 279 NW 513 (1938), the court held that the right of the state to appeal an acquittal in a criminal matter was not a right shared by its cities and cited *People* v *Smith, supra,* for the proposition that prosecutions of city ordinance violations did not constitute criminal cases as that term was used in the general criminal laws of the state.

"The charge upon which defendant was arrested was not criminal in character and the proceedings were not criminal in the sense that they were an enforcement of general criminal laws. In *People* v. *Smith,* 146 Mich. 193, defendant was arrested upon a warrant for selling goods without a license contrary to the ordinance. The court said, 'prosecutions for violation of city ordinances are not criminal cases within the meaning of the term as used in the general laws of the State,' and held that violations of city ordinances are not criminal cases within the meaning of the statute allowing exceptions to be certified to this court before judgment in criminal cases.

Nor are such violations criminal cases within the meaning of the statutes and rules for review by this court. Review in this court by appeal is the proper method (see *People* v. *Smith, supra,*) and the people of the city of Ann Arbor having been granted permission to appeal, the cause is properly before us." *People v Ricksen, supra,* 287-288.

Nevertheless, just as it had done in *People* v *Smith, supra,* the court again acknowledged that violations of local ordinances were in some respects criminal acts when it said:

"We have held in many cases that violation of an ordinance is 'in one sense a crime.' *City of Detroit* v. *Wayne Circuit Judge,* 233 Mich. 356.

See *People* v. *Goldman,* 221 Mich. 646, (complaint charged a crime as well as violation of the ordinance); *People* v. *Hanrahan,* 75 Mich. 611 (4 L.R.A. 751) (complaint charged a crime under the statute as well as ordinance); *Stewart* v. *Hart,* 196 Mich. 137, (legislature authorized city of Battle Creek to pass ordinances pertaining to public health, empowered it to 'prescribe penalties for (their) violation * * * and * * * declared a violation * * * a misdemeanor')." *People* v *Riksen, supra,* at 287.

Michigan's highest court was more explicit on the status of ordinance violations in *People v Sarnoff,* 302 Mich 266, 4 NW2d 544 (1942). In that case, defendant had violated a municipal ordinance which was also a violation of state statute. The court stated in part:

"Since *People* v. *Hanrahan,* 75 Mich. 611 (4 L.R.A. 751), this court has held that the violation of an ordinance is a criminal act, and where the violation of an ordinance is also the violation of a statute,

upon conviction of the violation of such an ordinance the court has power to place the defendant on probation. *People* v. *Goldman,* 221 Mich. 646." *People* v *Sarnoff, supra,* at 272.

In *Delta County* v *Gladstone,* 305 Mich 50, 8 NW2d 908 (1943), the Michigan court seemed to retreat from its holding in *People* v *Sarnoff, supra.* Decided just a year after *Sarnoff,* it failed to mention that case and instead, the court distinguished the legislative power of the state and that of its political subdivisions. Holding that fines collected for violations of municipal ordinances where the prosecutions were instituted in the name of the city belonged to the city, notwithstanding penalties were also provided for the same offense by state statute, the court stated:

"Although our early decisions held that prosecutions for violations of ordinances were not criminal in nature (see *People* v. *Smith,* 146 Mich. 193, and cases cited), it has been later recognized that such proceedings are in a sense criminal. *People v. Goldman,* 221 Mich. 646; *City of Detroit* v. *Wayne Circuit Judge,* 233 Mich. 356; *People* v. *Riksen,* 284 Mich. 284 (116 A.L.R. 116). However, we have at no time completely abrogated the distinction existing between the two types of proceedings even though the particular ordinance under which the prosecution was instituted pertained to conduct also prohibited by statute."

" 'We have heretofore on more than one occasion intimated that the penal laws referred to in the State Constitution were the laws of the state. The term *law,* as defined by the elementary writers, emanates from the sovereignty and not from its creatures. The legislative power of the State is vested in the State legislature, and their enactments are the only instruments that can in any proper sense be called laws.' " *Delta County* v *Gladstone, supra,* 53-54.

The court in *Gladstone* said that local ordinances were not penal laws in that the phrase "penal laws" has been held to mean the "penal laws of the State." *Fennell* v *Common Council of Bay City, supra.* Nonetheless, the fact that local ordinances do not attain the status of penal laws does not infringe upon their status of criminal acts. *People* v *Hanrahan, supra,* 630.

The most recent case dealing with the status of the violation of a local ordinance was given by the Michigan Court of Appeals in *People* v *Burnett,* 55 Mich App 649, 223 NW2d 297 (1974). Faced with the question of whether a defendant had a right to a jury trial when prosecuted for violating a municipal ordinance, the court took cognizance of the fact that prior Michigan case law recognized violations of local ordinances as crimes.

"In *People* v *Goldman,* 221 Mich 646; 192 NW 546 (1923), the Supreme Court held that the violation of a Detroit city ordinance was a crime. In reaching its ultimate conclusion that the word 'crime' as used in the probation act, MCLA 771.1; MSA 28.1131, embraces prosecutions for acts or omissions under the state law and also constitutes violations of local ordinances, the *Goldman* Court quoted

with approval *People* v *Hanrahan,* 75 Mich 611; 42 NW 1124 (1889), where it was said on pages 649-650 that:

> ' "Whenever a person does an act which is prohibited by law, which act is punishable by fine, penalty, forfeiture, or imprisonment, he commits a crime—
> 'and, further, that an ordinance validly enacted is—
>
> ' "as much the law of the land for that locality as a law enacted by the legislature; and a person violating it commits an offense, and in one sense a crime, for which he may be sentenced." ' " *People* v *Burnett, supra,* 653.

The Court of Appeals concluded that in prosecutions for violations of local ordinances which authorized incarceration or which were also violations of state statute, the defendant had a right to a jury trial.

> "We, therefore, hold that where, as here, a defendant is charged with violating a municipal ordinance which is in terms identical to a section of the general criminal legislation of the state or where the ordinance authorizes incarceration as a permissible sentencing alternative, said *violation of such ordinance is a crime* and, . . . defendant . . . is entitled to a jury trial. . . ." *People* v *Burnett, supra,* 654-655. (Emphasis added.)

It is thus apparent that when one violates a validly enacted local ordinance, such violation is a crime. Such interpretation having been made by the appellate courts of Michigan, I conclude that the authority of the Department of State Police extends to enforcement of local ordinances including local parking ordinances.

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Attorney General.