and sewer rates. I would, however, call to your attention the language added to MCLA 141.121; MSA 5.2751 by 1974 PA 27, which provides:

> ". . . Any rates pledged for the payment of bonds that are fixed and established pursuant to the provisions of a contract or lease shall not be subject to revision or change, except in the manner provided in the lease or contract. . . ."

FRANK J. KELLEY,
Attorney General.

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CONSTITUTION OF MICHIGAN: Article 4, Section 24.

CONSTITUTION OF MICHIGAN: Article 4, Section 25

CONSTITUTION OF MICHIGAN: Article 3, Section 2.

CIVIL SERVICE COMMISSION: Constitutional authority to classify and allocate.

CIVIL RIGHTS COMMISSION: Constitutional power to promulgate procedural rules.

STATUTES: Severability of unconstitutional provisions.

The constitutional requirement that no law embrace more than one object expressed in its title, Const 1963, art 4, § 24, is designed to put legislators and other interested persons on notice of the contents of each law. This constitutional provision, therefore, prohibits any of the following provisions from being included as part of a bill to make appropriations:

1. A requirement that the attorney general issue opinions to legislators within 90 days or state in writing his reasons for failing to do so. (The attorney general will, nevertheless, comply with this provision since he has the authority to accomplish this desirable goal independently of any statutory requirement);
2. Establishment of an advisory committee on the arts;
3. Prohibition against use of funds by any state agency for eavesdropping devices; and
4. Assignment of a task force to prevent the escape of mental patients.

The constitutional requirement that the section or sections of an act altered or amended shall be re-enacted and published at length, Const 1963, art 4, § 25, is calculated to achieve harmony and consistency in the statute law and to inform the people of the law they are expected to obey. The following provisions in various appropriation bills were fatally defective for failing to re-enact and publish existing statutory provisions:

1. A change from existing law that would require the central books of account to remain open for 75 days instead of 30 days after the end of the fiscal year;
2. A change from existing law that would impose limitations on the inter-transfer of funds by the state administrative board;

3. A change from existing law that would impose a $4.00 fee for filing an appeal with the state tax tribunal;

4. A change from existing law that would authorize a different procedure for remitting race track proceeds to the state;

5. A change from existing law that would impose a new basis for determining the amount of state aid for public libraries;

6. A change from existing law that requires use of the liquor control revolving fund for staffing, services, supplies and equipment;

7. A transfer from the state police to the department of natural resources of the duty to maintain and furnish water accident reports;

8. A change from the existing law prohibiting the department of mental health from collecting information identifying by name an individual who receives a service from a county program; and

9. A change from the existing law authorizing the racing commissioner to allocate racing dates.

The constitutional doctrine of separation of powers contained in Const 1963, art 3, § 2, prohibits any requirement of prior legislative approval before expenditure of appropriated funds.

The legislature is constitutionally inhibited from interfering with the authority of the civil service commission to classify and reallocate positions in the state classified civil service.

The legislature is constitutionally inhibited from interfering with authority of the civil rights commission to promulgate rules for its own procedures.

Unconstitutional boiler-plate provisions in an appropriation bill are severable from valid provisions; the valid portions may therefore be implemented.

Opinion No. 4896 September 9, 1975.

The Honorable William G. Milliken
Governor
Capitol Building
Lansing, Michigan 48901

You have requested my opinion regarding several questions which relate to the appropriations bills for the state budget for fiscal year 1975-1976.

In your correspondence, you note that several of the bills contain material, which you believe, raise substantial constitutional questions. I will respond to each of the questioned provisions by analyzing the appropriate constitutional provisions.

Of the provisions cited in your letter, the following must be considered in light of Const 1963, art 4, § 24: Enrolled House Bill 4439, Section 32; Enrolled Senate Bill 305, Section 35; Enrolled House Bill 4448, Sections 23 and 31.

Const 1963, art 4, § 24 states:

> "No law shall embrace more than one object, which shall be expressed in its title. No bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its total content and not alone by its title."

The pertinent language of Const 1963, art 4, § 24, also appeared in Const 1908, art 5, § 21 and the Supreme Court has rendered opinions relevant to this provision in both constitutions.

In *People* v *Wohlford,* 226 Mich 166, 168; 197 NW 558 (1924), the Supreme Court, referring to Const 1908, art 5, § 21, said:

> ". . . The test to be applied is, whether the language of the title is sufficient to give notice of the general subject of the legislative act and the interests likely to be affected thereby. . . ."

In *Rohan* v *Detroit Racing Association,* 314 Mich 326, 355; 22 NW2d 433, 444 (1946), the Supreme Court opined regarding rules for determining constitutionality of acts whose title did not address the subject matter contained therein. The Court said:

> "The rule for determining this question of constitutionality was stated in *Loomis* v. *Rogers,* 197 Mich. 265, 271, as follows:
>
> " 'If the act centers to one main general object or purpose which the title comprehensively declares, though in general terms, and if provisions in the body of the act not directly mentioned in the title are germane, auxiliary, or incidental to the general purpose, the constitutional requirement is met.'
>
> "In *People, ex rel. Wayne Prosecuting Attorney,* v. *Sill,* 310 Mich. 570, 574, we said:
>
> " 'The well-established rules of construction are that an act is not violative of the above constitutional provision if its title fairly covers the general subject matter of the act. A title is sufficient in detail even though it does not constitute a table of contents or an index to the act. See *City of Bay City* v. *State Board of Tax Administration,* 292 Mich. 241. The title is good if it is a descriptive caption, directing attention to the subject matter which follows, *Loomis* v. *Rogers,* 197 Mich. 265; or if it be expressive of the purpose and scope of the enactment, *In re Lewis' Estate,* 287 Mich. 179, 183.' "

See also: *People* v *Carey,* 382 Mich 285; 170 NW2d 145 (1969); *Knatt* v *City of Flint,* 363 Mich 483; 109 NW2d 908 (1961); *Arnold* v *Ogle Construction Co.,* 333 Mich 652; 53 NW2d 655 (1952); and *People* v *Milton,* 393 Mich 234; . . . NW2d . . . (1974).

In formal opinion No. 4824, dated July 24, I reviewed the purpose of Const 1963, art 4, § 24, noting that it is designed to put legislators and others interested on notice of the object of a law thereby assuring them that only matters germane to the provisions noted in the title will become law. See: *Continental Motors Corporation* v *Township of Muskegon,* 376 Mich 170; 135 NW2d 908 (1965). I also noted that the Michigan Supreme Court has most recently reaffirmed this position in *Advisory Opinion re*

Constitutionality of 1972 PA 294, 389 Mich 441, 465; 208 NW2d 469, 473, 474 (1973), stating:

> "An act may include all matters germane to its object. It may include all those provisions which directly relate to, carry out and implement the principal object. . . . [T]he purpose of this constitutional limitation is to insure that both the legislators and the public have proper notice of legislative content and to prevent deceit and subterfuge."

The title of Enrolled House Bill 4439 reads as follows:

> "AN ACT to make appropriations for the legislature, the judiciary, the executive, the department of attorney general, the department of state, the department of treasury, the department of management and budget, the department of civil service, the department of civil rights and certain state purposes related thereto for the fiscal year ending June 30, 1976; to provide for the expenditure of such appropriations; to provide for the disposition of fees and other income received by the various state agencies; and to declare the effect of this act."

Section 32 of Enrolled House Bill 4439 states:

> "The office of the attorney general upon receipt of a request for an opinion by a member of the legislature shall forthwith acknowledge receipt of such request. The attorney general shall issue an opinion within 90 days from the date of the request or in lieu of such opinion, shall set forth in writing his reasons for not issuing an opinion and this shall be transmitted to the requesting legislator."

It is my opinion that said section, which is identical to a provision contained in the previous year's appropriations act, is in violation of Const 1963, art 4, § 24 because nothing in the title of Enrolled House Bill 4439 suggests that the bill contains a requirement obligating the Attorney General to acknowledge receipt of an opinion request or issue the same within any particular time frame. However, although I deem this provision to be unconstitutional, I have instructed members of my staff to adhere to this standard inasmuch as it is a desirable objective and within my prerogatives as Attorney General to perform independently of any legislative requirement.

Inasmuch as Section 32 of Enrolled House Bill 4439 is unconstitutional in light of Const 1963, art 4, § 24, and since the act does make appropriations for all branches of state government, it is clear that this bill would have been enacted without Section 32 being made a part thereof. See: OAG, 1965-1966, No. 4575, p 389 (December 23, 1966). I conclude, therefore, that the remaining provisions of the bill are valid, pending review relative to any other constitutional infirmities.

You have asked my opinion relevant to Enrolled Senate Bill 305 and Section 35 thereof in light of Const 1963, art 4, § 24. Section 35 reads as follows:

> "(1) The advisory committee on the arts in Michigan education is created within the department of education. The committee shall consist of 25 members appointed by the state board upon the recom-

mendation of the joint legislative committee on the arts. The members shall serve for terms of 3 years, except that of the members first appointed 3 each shall be appointed for terms of 1, 2, and 3 years. The committee shall elect a chairperson from among its members. Members of the committee shall be reimbursed for expenses incurred in the performance of their official duties. The committee shall evaluate current efforts and developments in comprehensive arts programs and submit its recommendations and findings to the state board. The committee shall recommend to the state board guidelines for comprehensive arts programs in education. The department shall consult with the advisory committee on the arts in Michigan education with respect to all programs funded under this section.

"(2) For the purpose of employing professional arts specialists to coordinate comprehensive arts programs, or providing comprehensive arts services, or providing equipment and supplies, or all 3, concentrating in the elementary grades, but not restricted to them, a district or intermediate district will become eligible for funding by:

"(a) Presenting a plan for offering a comprehensive arts program approved by the department. The district or intermediate district is entitled to 75% of the actual added cost of employing a professional arts specialist or $8,100.00, whichever is lesser.

"(b) Meeting the criteria established by the department in conjunction with and upon the recommendation of the advisory committee on the arts in Michigan education.

"(3) An applicant district or intermediate district that has decreased the number of existing arts specialists after July 31, 1976, shall not be eligible for funds to hire a new arts specialist.

"(4) Existing arts specialists in the applicant district or intermediate district may be transferred to the position funded if the applicant district or intermediate district replaces the vacated position at its own expense.

"(5) Five experimental or demonstration comprehensive arts projects which employ the arts as tools in basic education will be awarded and funded upon the recommendation of the advisory committee on the arts in Michigan education. The department will evaluate the effectiveness of the projects and submit its findings to the legislature.

"(6) As used in this section, 'comprehensive arts' includes, but is not limited to, dance, drama, visual arts, and music. These elements should be interrelated with one another and integrated into the regular instruction program."

The creation of a commission in an appropriations act is virtually identical to the act I reviewed in formal opinion No. 4824, dated July 24, 1974, addressed to Mr. Perry Johnson, Director of the Department of Corrections. In the particular appropriations act for the Department of Corrections in fiscal year 1973-74, nothing suggested the creation of an office of corrections ombudsman. I was constrained to conclude that the act in question embraced more than one object and it contained objects in its

body which were not expressed in its title. I am constrained to again construe a section of an appropriations act which creates an advisory committee on the arts in Michigan education, Section 35 of Enrolled Senate Bill 305, to be unconstitutional since there is no reference or suggestion in the title of Enrolled Senate Bill 305 for such an entity and the act embraces more than one object and it contains objects in its body which are not expressed in its title.

Inasmuch as Section 35 of Enrolled Senate Bill 305 is unconstitutional in light of Const 1963, art 4, § 24, and since the act does make appropriations for all branches of state government, it is clear that this bill would have been enacted without Section 35 being made a part thereof. See: OAG, 1965-1966, No. 4575, p 389 (December 23, 1966). I conclude, therefore, that the remaining provisions of the bill are valid.

In reference to Enrolled House Bill 4448, you have requested my opinion relevant to whether Sections 23 and 31 violate the provisions of Const 1963, art 4, § 24.

Section 23 reads:

> "None of the funds contained in this act shall be used by a department, commission, board, bureau, division, or other agency of the state, or an agent or employee thereof, for a device designed for monitoring, eavesdropping, or wiretapping on a telephone or telephone line without a valid search warrant. All principal departments shall, by August 29, 1975, submit a report to the senate and house appropriations committees listing any existing equipment in their possession or under their control that has the potential for monitoring, eavesdropping, or wiretapping on a telephone or telephone line without a valid search warrant. All principal departments shall, by August 29, 1975, submit a report to the senate and house appropriations committees listing any existing equipment in their possession or under their control that has the potential for requests when equipped with a beep tone. This section shall not be construed to restrict the department of state police in the performance of its responsibilities in the conduct of criminal investigations in accordance with state and federal law."

Section 31 provides:

> "The director of the department of state police shall assign a task force with a minimum of 4 positions under the direction of a lieutenant to work with the department of mental health to prevent the escape of mental health patients, and expedite the return of escaped mental patients."

In light of the analysis above relative to this same constitutional provision, I am constrained to conclude that both Sections 23 and 31 of Enrolled House Bill 4448 are unconstitutional inasmuch as nothing in the title of Enrolled House Bill 4448 would suggest a prohibition against the use of funds appropriated by said act relevant to the use of monitoring, eavesdropping or wiretapping equipment without possession of a valid search warrant; nor would the act notify the reader of reporting require-

ments to the Senate and House Appropriations Committees relative to this information or the existence of any equipment in the possession of the Department of State Police or under their control. In addition, nothing in the title would even suggest the creation of a task force under the direction of a lieutenant to work with the Department of Mental Health to prevent the escape of mental patients and to expedite the return of mental patients. Hence, I am constrained to conclude that Enrolled House Bill 4448 embraces more than one object and it contains objects in its body which are not expressed in its title therefore rendering Sections 23 and 31 unconstitutional being in violation of Const 1963, art 4, § 24.

Inasmuch as Sections 23 and 31 of Enrolled House Bill 4448 are unconstitutional in light of Const 1963, art 4, § 24, and since the act does make appropriations for all branches of state government, it is clear that this bill would have been enacted without Sections 23 and 31 being made a part thereof. See: OAG, 1965-1966, No. 4575, p 389 (December 23, 1966). I conclude, therefore, that the remaining provisions of the bill are valid.

You have also asked my opinion regarding whether Enrolled House Bill 4439, Sections 2(3), 9, 37, 49, 50; Enrolled Senate Bill 305, Sections 27 and 35; Enrolled House Bill 4447, Section 23; Enrolled Senate Bill 304, Section 30; and Enrolled House Bill 4451, Section 24, violate the provisions of Const 1963, art 4, § 25. Const 1963, art 4, § 25 states:

> "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."

The Michigan Supreme Court in *Alan* v *Wayne County*, 388 Mich 210; 200 NW2d 628 (1972), exhaustively reviewed the mandate of the aforementioned constitutional provision. The Court at p 269, said:

> "* * *
>
> "Our job here is to determine the meaning and application of Const 1963, art 4, § 25:
>
> "* * *"

After reviewing several cases which dealt with the question of "amendment by implication", which the Court said the case at bar was not, it then quoted Justice Cooley writing in the case of *Mok* v *The Detroit Building & Savings Association No. 4*, 30 Mich 511 (1875), which explained the reasons for the existence of 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 legislature 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, * * *.' *Mok,* 515-516. (Emphasis added.)"

Further, in *Alan* the Court said:

"See also *Clay* v *Penoyer Creek Improvement Co.,* 34 Mich 204, 208-210 (1876), a case similar to *Mok* where the Court had under consideration a statute providing for the appointment of commissioners by reference to another act. Parties claimed that by virtue of the referring act the appointment of commissioners could be had in a way different from the act referred to. Of this the Court said:

" 'While we do not question the right or power of the legislature to thus refer to the provisions of another statute, and render them applicable and binding as though incorporated and re-enacted in the act under consideration, *yet such a method of incorporating certain sections of previous statutes in subsequent acts, must be confined to cases* where the sections so referred to are germane to the latter act; *where it will not be necessary that parties should either omit from or add important words or provisions to the sections referred to in order to render them applicable.* When such changes become necessary, it is leaving to each party acting under the statute the power to change it to suit his convenience, and thus to legislate for himself. And when he has done *so there is no certainty at all that the legislature, had its attention been specially called thereto, would have made like changes, or if it had, that the act would have become a law by receiving the approval of the governor.*' Id, 208-209. (Emphasis added.)

"And in conclusion the Court summed up the rule of *Mok* which is still the law of this state:

" '*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.* Had this been done, then the inquiry of the commissioners would have been limited as we have just stated. *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. —*Mok* v *Detroit Building, etc., Co.,* 30 Mich., 511; *United States* v *Bassett,* 2 Story, 403 [CA1, 1843].' Id, 210-211. (Emphasis added.)" p 273-274.

At p 281, in *Alan* the Court paraphrased the *Mok* decision in these terms:

"*Mok* stands for the rule that you *cannot* amend statute C even by putting in statute B specific words to amend statute C, unless you republish statute C as well as statute B under Const 1963, art 4, § 25."

Continuing in *Alan,* pp 281-283, the Court asserted that:

"*Mok* says the constitution requires you to do the whole job right. . . . *Mok* requires the second half of the job of republication even though you disclose your purpose.

"This Court is convinced the constitution is not satisfied with halfway measures and does not prefer dissimulation to straightforwardness. We adopt the rule of *Mok* . . .

"It is argued, however, that it would be unreasonable to require the Legislature to reenact and republish statutes which they intend to amend and that the constitution should not be read to require the doing of what it plainly states on its face. What must be underscored, it is said, is other language in *People* v *Mahaney*:

" ' "If, whenever a new statute is passed, it is necessary that all prior statutes, modified by it by implication should be re-enacted and published at length as modified, then a large portion of the whole code of laws of the State would require to be re-published at every session, and parts of its several times over, until, from mere immensity of material, it would be impossible to tell what the law was." ' *Stimer,* 279, quoting *Mahaney,* 497.

"Several answers are appropriate to this objection. First, we do not have such a case before us now. Second, this objection, even if valid, should not be extended to the point where it produces just the result it seeks to avoid—it should not be impossible to tell what the law is. Third, where the Legislature really intends to amend previous statutes so that their operation is narrower or broader than stated or previously construed to be, then this intent as expressed *is not amendment by implication* and cannot be rendered amendment by 'implication' by the device of failing to point out the specific section intended to be altered or amended.

"Fourth, and of most importance, is that *constitutional duties and requirements may not be avoided on the ground that it might be a lot of work to comply with the constitution.* This objection is treated forthrightly by Justice Potter in his dissenting opinion in *People* v *Stimer* at p 295:

" 'The people contend that if defendant's contention is well taken, the legislature has been proceeding upon a theory which, if overturned, will seriously affect the governmental activities of the State, * * *. So far as this question is entitled to consideration:

" 'The legislature must comply with the constitutional provision so long as it remains in force.

" '*If the people of the State are not desirous of having the legislature comply with the constitutional provision above quoted, then such provision may be abolished by an amendment to the Constitution; * * *.*' (Emphasis is present writer's.)"

The Court, in *Alan,* then at p 285 said:

"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."

The Court concluded in its discussion relative to this issue by concluding with the following terms:

"In sum, we agree with Justice Cooley in *Mahaney* that the constitution must be given a reasonable interpretation and we do no more than that. Whereas the *Mahaney* Court felt compelled to shy from the plain words of the constitution in light of then available tools, we construe the provision to mean what it says in light of the tools available today and required to be used under the injunction of Const 1963, art 4, § 15."[1]

The provisions of Enrolled House Bill 4439 in light of the questions raised by reading interpretations of Const 1963, art 4, § 25, will be addressed individually. Section 2(3) states:

"Notwithstanding the provisions of Act No. 95 of the Public Acts of 1965, being sections 21.251 to 21.255 of the Michigan Compiled Laws, none of the money appropriated by this act shall be used to pay prior year's bills, obligations, or encumbrances. At the close of the fiscal year the unencumbered balance of each appropriation lapses and reverts to the state fund from which it was appropriated. The central books of state accounts shall remain open for a period of not more than 75 days after the end of the fiscal year to allow for the recording of ascertainable documents properly applicable to such fiscal year."

A comparison of Section 2(3) of Enrolled House Bill 4439 with 1965 PA 95, § 2; MCLA 21.252; MSA 3.583(2), indicates that the legislature is changing the period of time during which the central books of state accounts are to remain open. 1965 PA 95, § 2, states that they shall remain open for 30 days whereas Section 2(3) allows 75 days without reenacting or republishing at length the section which is altered or amended. Based on a reading of Const 1963, art 4, § 25, and the aforementioned language in the Supreme Court, it is my opinion that Section 2(3) of Enrolled House Bill 4439 is unconstitutional.

Section 9 of Enrolled House Bill 4439 provides:

"(1) No transfer of appropriations made herein shall be made between any item or items of appropriation within any agencies for which an appropriation is made under the provisions of this act unless and until approval of such transfer is first secured from the legislature or the special commission on appropriations created under the pro-

[1] Const 1963, art 4, § 15, provides for the creation of a bipartisan legislative council consisting of legislators appointed in a manner prescribed by law (1965 PA 412; MCLA 4.311; MSA 2.138(1)). The legislature is to provide funds for the council's operations and provide for its staff which maintains bill drafting, research and other services for members of the legislature.

visions of Act No. 120 of the Public Acts of 1937, as amended, being sections 5.1 to 5.5 of the Michigan Compiled Laws, any other law to the contrary notwithstanding. The legislature while in session, by concurrent resolution, may authorize transfers recommended by the director of the department of management and budget.

"(2) Intertransfers of appropriations for any particular department or institution, shall not be made which will increase or decrease an item of appropriation by more than 3% or $10,000.00, whichever is greater, and only for purposes of the payment of employee longevity, insurance or retirement payments, and an item of appropriation shall not be increased or decreased by more than $50,000.00 in the aggregate, nor shall any transfer be made into any salary and wage account.

"(3) Transfers made under this section shall be reported by the budget director within 30 days to the senate and house appropriations committees with copies to the senate and house fiscal agencies."

1921 PA 2, § 3; MCLA 17.3; MSA 3.263, provides in pertinent part that:

"The state administrative board shall exercise general supervisory control over the functions and activities of all administrative departments, boards, commissioners and officers of the state, and of all state institutions: Provided, however, The said board shall not have power to transfer any appropriation to the general fund at any time or use the same for any purpose other than that designated by the legislature: Provided further, That said board shall not have power to allow any state department, board, commission, officer or institution any funds, not appropriated therefor by the legislature, from any source whatever, except as provided in the emergency appropriation act of 1931; . . ."

Section 6 of 1921 PA 2; MCLA 17.6; MSA 3.265, provides further insight as to the powers of the State Administrative Board concerning the transfer and appropriation of funds. Said section in pertinent part states:

"The state administrative board shall not have power to allow to any state department, board, commission, officer, or institution any funds, not appropriated therefore by the legislature, from any source whatever, except as provided in the emergency appropriation act of 1937; and said administrative board shall not have the power to transfer to any state department, board, commission, officer or institution any sum from the amount appropriated by the legislature for any other purpose, except to intertransfer funds within the appropriation for the particular department, board, commission, officer, or institution. . . ."

1948 PA 1st Ex Sess 51, § 9; MCLA 18.9; MSA 3.516(9), provides the following language:

"The budget division of the department [presently the Department of Management and Budget pursuant to 1972 PA 127, § 1; MCLA 16.200; MSA 3.29(100)] shall be vested with the powers and duties granted to and imposed on the office of budget director by the state budget act as amended.

> "Whenever the state budget act or any amendment thereof uses the term budget director or office of budget director, or whenever any law of the state relating to appropriations, allotments, transfers between or advances to funds, uses the term budget director or office of budget director, reference shall thereby be understood to be made to the budget division of the department. The present office of budget director is hereby abolished.
>
> "Authority to transfer funds within an appropriation for a particular department, board, commission, office or institution is hereby transferred to and vested in the budget division of the department: Provided, That all such transfers shall be reported to and first approved by the state administrative board."

It is apparent from the reading of the three sections involved that the State Administrative Board has authority to intertransfer without the limitations expressed in Section 9. It is therefore my opinion that Section 9 of Enrolled House Bill 4439 does in fact attempt to amend §§ 3 and 6 of 1921 PA 2, *supra,* and § 9 of 1948 PA 1st Ex. Sess. 51 and, as such, is in violation of Const 1963, art 4, § 25 and unconstitutional.

Section 49 of Enrolled House Bill 4439 provides the following language:

> "Each taxpayer filing an appeal with the state tax tribunal shall pay a fee of $4.00 with each appeal filed in excess of 1 and the money shall be paid into the general fund of the state treasury."

Reference to 1973 PA 186; MCLA 205.701 *et seq;* MSA 7.650(1) *et seq,* to so-called Tax Tribunal Act, makes reference to fees to be paid in connection with hearings held by the state tax tribunal. Section 49 of Chapter 4; MCLA 205.749; MSA 7.650(49), was effective on July 1, 1974, and states the following:

> "(1) The tribunal by rule shall prescribe filing fees and other fees to be paid in connection with a proceeding. The fees charged shall be sufficient to cover costs of the tribunal except the costs of publishing its decisions, the salaries of the tribunal members, their chief clerk, and the costs of the small claims division. The fees shall be paid to the clerk of the tribunal and by order of the tribunal may be taxed as costs.
>
> "(2) The residential property division of the tribunal shall not charge fees or costs.
>
> "(3) Fees shall be collected by the clerk and paid directly into the state general fund."

From a reading of Section 49 of Enrolled House Bill 4439, it is apparent that the legislature has heretofore acted to prescribe a procedure for enacting fees regarding the filing of claims to the state tax tribunal. An attempt to establish a flat fee in Section 49 of Enrolled House Bill 4439 purports therefore to amend or modify the existing provision and as such is in violation of Const 1963, art 4, § 25, thereby rendering Section 49 unconstitutional.

Section 50 of Enrolled House Bill 4439 provides:

"On the first secular day after each day's racing, every race meeting licensee under the provisions of Act No. 27 of the Public Acts of 1959, as amended, being sections 431.31 to 431.56 of the Michigan Compiled Laws, shall remit to the state treasurer, or deliver to the representative of the commissioner, all moneys due to the state at the close of the day's racing which moneys shall be deposited daily in a bank or a branch thereof chartered either by the state or the national government and located within the same local political unit of government in which the licensee's track is located."

Reference to 1959 PA 27, § 10(2); MCLA 431.40; MSA 18.966(10) states the following:

"On the first secular day after each day's racing, every race meeting licensee shall remit to the state treasurer, or deliver to the representative of the commissioner, all monies due the state at the close of the day's racing, with a detailed statement thereof as required by the regulations."

It is quite apparent that Section 50 of Enrolled House Bill 4439 attempts to amend or modify § 10(2) of 1959 PA 27; MCLA 431.40; MSA 18.966(10), by authorizing a different procedure for the remittance of money due the state, without republication or reenactment of the 1959 Act. It is my opinion that this action by the legislature results in Section 50 being unconstitutional, the same being in violation of Const 1963, art 4, § 25 which requires republication or reenactment of any act being amended or modified.

You have also requested my opinion regarding Enrolled Senate Bill 305, Section 27, which reads as follows:

"The $4,576,000.00 appropriated in section 1 for state aid to local public libraries shall be distributed according to the following conditions and terms:

"(a) A public library shall receive during any fiscal year a grant of 30 cents per capita from state aid, if in the year prior to the year of distribution the library received local support amounting to 3/10 mill and met minimum standards.

"(b) A library system shall be granted continuing state aid in an amount per capita of its served population, based upon the average density of population per square mile of the area served, in accordance with the following schedule:

Square Mile Population Density	Grants Per Capita
Over 35	25 cents
26-35	32 cents
16-25	39 cents
Under 16	45 cents"

The state aid to public libraries act, 1965 PA 286, § 16(1); MCLA 397.516(1); MSA 15.1791(116)(1), provides:

"Sec. 16. (1) Any public library shall receive during any fiscal year a grant of 5 cents per capita from state aid, if in the year prior

to the year of distribution the library received local support amounting to 3/10 mill and met minimum standards. Any county or regional library board appointing to the office of head librarian a person with either a bachelor of arts or a bachelor of science degree from a college or university approved by an accrediting association of more than statewide standing, including or supplemented by 1 full year of training in a library school accredited by the American library association and with at least 4 years' experience in an administrative capacity in an approved library shall be reimbursed for that portion of the salary not exceeding $400.00 for any one month or $4,800.00 in any one year, if the county or regional library received during its last completed fiscal year prior to the year in which distribution is to be made, from the county or counties not less than $3,600.00 exclusive of moneys received from federal or state grants in aid to the library."

From a reading of the two provisions cited above, it is obvious that Section 27 of Enrolled Senate Bill 305 attempts to alter and amend 1965 PA 286, *supra,* based on the fact that it changes the grant amount per capita from state aid and secondly, it establishes a system of continuing state aid in an amount per capita of a library system's served population based on the average density of population per square mile of the average served according to a schedule devised therein. This is tantamount to amending and altering Section 16 which establishes grants per capita from state aid based upon a fixed per capita amount if in the year prior to the distribution the library received local support amounting to 3/10 mill and met minimum standards. Without republishing or reenacting 1965 PA 286, it is my opinion that Section 27 of Enrolled Senate Bill 305 violates Const 1963, art 4, § 25 as interpreted in *Alan* v *Wayne County, supra,* and results in Section 27 of Enrolled Senate Bill 305 being unconstitutional.

You have also asked for my review of Enrolled House Bill 4447, Section 27(1), which provides:

"There is appropriated from the liquor purchase revolving fund of the liquor control commission funds not to exceed 5% of the gross sales of liquor for the 1975-76 fiscal year, other than beer or wine, which shall be used solely by the liquor control commission to exercise complete control of alcoholic beverage traffic within this state. The control shall be provided through the necessary staffing, services, supplies, and equipment for the functions of purchasing, inspecting, investigating, licensing, transporting, warehousing, maintaining, selling of liquor through state stores, processing of sales and all inventory records related thereto, and the recording and reporting of expenditures related to these activities. This section shall not be construed to limit the authority of the liquor control commission to purchase liquor for resale as defined by existing statutes."

Section 230 of Chapter 10 of 1965 PA 380 provides the following:

"The state liquor control commission created by section 5 of Act No. 8 of the Extra Session of 1933, as amended, being section 436.5 of the Compiled Laws of 1948, is transferred by a type I transfer to the department of commerce." MCLA 16.330; MSA 3.29(230)

Section 3 of Chapter 1 of 1965 PA 380; MCLA 16.103; MSA 3.29(3), provides the following:

"(a) Under this act, a type I transfer means the transferring intact of an existing department, board, commission or agency to a principal department established by this act. When any board, commission, or other agency is transferred to a principal department under a type I transfer, that board, commission or agency shall be administered under the supervision of that principal department. Any board, commission or other agency granted a type I transfer shall exercise its prescribed statutory powers, duties and functions of rule-making, licensing and registration including the prescription of rules, rates, regulations and standards, and adjudication independently of the head of the department. Under a type I transfer all budgeting, procurement and related management functions of any transferred board, agency or commission shall be performed under the direction and supervision of the head of the principal department."

In regard to whether Section 27(1) of Enrolled House Bill 4447 is in violation of Const 1963, art 4, § 25 if it amends or alters 1965 PA 380, *supra,* or any other existing statute relative to the Liquor Control Commission, I am attaching hereto a copy of a letter dated February 10, 1975 addressed to the Honorable Gary Owen, State Representative. Therein, I was asked whether the 1975-76 Executive Budget proposal which would transfer funding of certain liquor related operations in the Department of Commerce from the general fund to the liquor revolving fund was permissible. In reviewing 1933 PA Ex. Sess. 10; MCLA 436.10; MSA 18.981 which authorizes the Liquor Control Commission to maintain a revolving fund which is to be derived from monies deposited to the credit of the commission with the state treasurer which is supposedly to be used exclusively for the purpose of replenishing, maintaining, warehousing and transporting the liquor stock in the various state liquor stores throughout the state, I concluded that no language existed in the state constitution which authorized the creation of revolving funds and further that in regard to the question that had been raised by Representative Owen, it was my opinion, in the absence of any constitutional impediment or restriction, that *the legislature could transfer the positions in question to the liquor control revolving fund from the general fund.* I further concluded in response to the second question raised by Representative Owen, that the authority to transfer other positions or tasks of the Liquor Control Commission to the revolving fund was reposed in the legislature since the legislature can transfer funds for whatever purposes it deems necessary. The revolving fund in question, I concluded, was not immune from obligations that the legislature might choose to assess against it inasmuch as the legislature alone is responsible for the appropriations state agencies receive.

However, it is my conclusion that Section 27(1) of Enrolled House Bill 4447 does, in fact, violate Sections 3 and 230 of 1965 PA 380, *supra,* and 1933 PA Ex. Sess. 10, *supra,* even though the legislature does have the authority to transfer funds in any manner it might choose because Section 27(1) of Enrolled House Bill 4447 does alter, amend and modify

Section 10 of 1933 PA Ex. Sess. 10; MCLA 436.10; MSA 18.981 and Sections 3 and 230 of 1965 PA 380, *supra.* Section 27(1) is unconstitutional and is therefore in violation of Const 1963, art 4, § 25 as construed by the Michigan Supreme Court in *Alan* v *Wayne County, supra.*

You have directed my attention to Section 24 of Enrolled House Bill 4448 which states:

> "The powers, duties and responsibilities of the department of state police to collect, maintain and furnish watercraft accident reports, as provided for in sections 55, 56 and 57 of Act No. 303 of the Public Acts of 1967, as amended, being sections 281.1055, 281.1056 and 281.1057 of the Michigan Compiled Laws, are hereby transferred to the department of natural resources. This transfer shall not relieve the department of state police from the responsibility of receiving watercraft accident reports, as provided for in section 53 of Act No. 303 of the Public Acts of 1967, as amended, being section 281.1053 of the Michigan Compiled Laws."

Section 24 cited above purports transfer to the Department of Natural Resources the powers, duties and responsibilities of the Department of State Police to collect, maintain and furnish watercraft accident reports as provided for in 1967 PA 303, §§ 55, 56 and 57; MCLA 281.1055, 281.1056 and 281.1057; MSA 18.1287(55), 18.1287(56) and 18.1287(57). The legislature has failed to act in conformity with Const 1963, art 4, § 25 as interpreted by the Michigan Supreme Court in *Alan* v *Wayne County,* when it failed to either republish or reenact the relevant provisions of 1967 PA 303, *supra,* cited above which the legislature attempted to transfer to the Department of Natural Resources. As such, Section 24 of Enrolled House Bill 4448 must be viewed as being unconstitutional not having complied with the aforementioned constitutional mandate. Additionally, the provision of Section 24 which provides that the purported transfer would not relieve the Department of State Police from the responsibility of receiving watercraft accident reports as provided in 1967 PA 303, § 53; MCLA 281.1053; MSA 18.1287(53), is of no consequence since the purported action of Section 24 to transfer to the Department of Natural Resources is of no consequence and the Department of State Police would nevertheless be responsible for the obligations under § 53, *supra.*

You have also requested my opinion relevant to Section 30 of Enrolled Senate Bill 304 which states:

> "The department of mental health in developing and operating its community services data system shall ensure that the patients' rights of privacy are held inviolate and to this end the department is constrained from disclosing a patient's name, social security number, or any other identification gathered through the system. The director of the department shall maintain a control system to safeguard the rights of individuals involved."

You have questioned whether Section 30, cited above, amends, alters or modifies § 244 of 1974 PA 258, the Mental Health Code; MCLA 330.1244; MSA 14.800(244). § 244(b)(ii) states:

> "In developing or operating its county program information system, the department shall not collect any information that would make it possible to identify by name any individual who receives a service from a county program. Any such information in the possession of the department prior to the effective date of this chapter shall not be disclosed by the department."

It is apparent after a reading of Section 30 and § 244(b)(ii) that the former provision attempts to amend the latter since § 244(b)(ii) does prohibit the collection of *any information by the Department of Mental Health in the operation of its county program information system* whereas Section 30 indicates that the Department of Mental Health in developing and operating its community services data system shall ensure a patient's right of privacy and to this end it would be prohibited from disclosing a patient's name, social security number or any other identifying information gathered through the system. Inasmuch as Section 30 of Enrolled Senate Bill 304 would authorize the collection of information that would make it possible to identify by name an individual who receives services from a county program in violation of the aforementioned mandate in § 244, I am constrained to conclude that Section 30 of Enrolled Senate Bill 304 is unconstitutional and in violation of Const 1963, art 4, § 25 as interpreted in *Alan, supra.* I am also of the opinion that Section 30 violates the single purpose requirement of Const 1963, art 4, § 24.

You have also asked my opinion relative to Section 24 of Enrolled House Bill 4451 which states:

> "The state racing commissioner in allocating harness racing dates as authorized under the provisions of Act No. 27 of the Public Acts of 1959, as amended, being sections 431.31 to 431.56 of the Michigan Compiled Laws, shall allocate racing dates to licensees, whose average daily pari-mutuel handle has exceeded $500,000.00 consecutively within 6 calendar days preceding or following a race meet which meets these requirements."

It is my opinion that Const 1963, art 4, § 25 is violated by Section 24 of Enrolled House Bill 4451 since it alters or amends § 9 of 1959 PA 27; MCLA 431.39; MSA 18.966(9), which prescribes the exact procedure to be followed by persons desiring to conduct racing meets. These include applying to the commissioner for a license which is to be filed with the secretary on or before September 1 of the year preceding the year in which it is proposed to conduct racing. The commissioner shall grant or deny applications for thoroughbred racing and allocate or deny racing dates to licensed applicants before October 1 of the year preceding the date for which the applications are made. Regarding harness racing licenses, the commissioner is to grant or deny applications and allocate or deny racing dates to licensed applications before October 15 of the year preceding the year for which the applications are made, but in no case shall harness racing dates be allocated prior to the allocation of thoroughbred racing dates.

It is apparent from a reading of 1959 PA 27, § 9 that this procedure would be altered, amended or modified by Section 24 of Enrolled House Bill 4451 and, as such, it would be in violation of Const 1963, art 4, § 25.

It should be noted that even though several provisions of Enrolled House Bill 4439, Enrolled Senate Bill 305, Enrolled House Bill 4447, Enrolled House Bill 4448, Enrolled House Bill 4451 and Enrolled Senate Bill 304 have been declared unconstitutional, these bills make appropriations which would have been enacted without those provisions having been made a part thereof. OAG 1965-1966, No. 4575, p 389 (December 23, 1966). I conclude, therefore, that the remaining provisions of these bills are valid.

In addition to the aforementioned questions, you have asked whether certain provisions of the above enrolled bills violate Const 1963, art 3, § 2, the separation of powers doctrine. Four sections of Enrolled House Bill 4439, the General Government Appropriations Act, must be examined in light of this doctrine.

Const 1963, art 3, § 2 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."

Section 8(6) of Enrolled House Bill 4439, the General Government Appropriations Act, states:

> "Funds appropriated in this act shall not be used to cover contractual service contracts covering consultants' services or contractual personnel unless the director of the department certifies that moneys for these purposes are also included in the funds appropriated.
>
> "All proposed consultant contracts exceeding $50,000.00 shall:
>
> "(a) be reviewed and approved by the appropriations committees, and
>
> "(b) be posted for public information prior to management science approval in the secretary of state, Lansing office.
>
> "By March 1 of each year an itemized report on intended departmental reallocations or reclassifications and contractual service contracts shall be furnished by the director of each state department to the senate and house appropriations committee, with a copy to the senate and house fiscal agencies."

It is apparent that the legislature in Section 8(6) of Enrolled House Bill 4439 has attempted to regulate the use of appropriations and establish conditions for the letting of proposed consulting contracts.

In OAG, 1949-1950, No. 999, p 275 (July 8, 1949), the Attorney General was asked to respond to an inquiry from the controller of the Department of Administration concerning a provision inserted in several appropriations acts which provided that none of the funds appropriated in said act should be expended for the payment of salaries for new or additional positions in addition to the number of classifications specified therein. The question was stated in the following terms:

> "You state that the real question for determination by the Attorney General is whether the legislature had the power under the Constitution to set a rigid classification of personnel in each division of state government as appears in [the] various appropriation bills.

"It is the considered opinion of the Attorney General that the answer to your question must be in the negative." [p 276]

After reviewing the predecessor provision to art 3, § 2, the Attorney General said:

"Section 16 of article X of the Constitution of 1908 [presently Const 1963, art 9, §17] provides 'no money shall be paid out of the state treasury except in pursuance of appropriations made by law.' It is within the power of the legislature to establish the amount it will appropriate for personal services in every state agency. The legislature, in the exercise of its power to make laws, may create or abolish state agencies, may establish or abolish official positions therein, may fix specific salaries for the various offices which it creates and may set forth the duties to be performed by its agency and each office which it creates.

"The executive authority in control of each state office or agency created by the Constitution or by statute is charged with the duty of administering the functioning of such office or agency.

"It is an obligation of the legislature to maintain by appropriation the offices and agencies created by the Constitution. It is likewise the duty of the legislature to provide funds for the maintenance of agencies of the state created by statute.

" 'In making appropriations * * * the Legislature may attach any conditions it may deem expedient and wise and the Regents cannot receive the appropriation without complying with the conditions.' *Weinberg* v *Regents of University*, 97 Mich 246-254.

"In making appropriation of funds the legislature may not attach conditions to the use of such funds which amount to an invasion of the constitutional rights and powers of a separate branch of state government.

"The legislature may not attach to an appropriation act unconstitutional conditions. It is fundamental that appropriations to meet the pay roll or to pay for the personal services in state agencies must be initiated by the legislature and in the event a section of such appropriation act is unconstitutional and void, such terms may be disregarded by the auditor general and controller of the department of administration." [p 277]

It is thus seen that the legislature may not perform executive functions such as those alluded to in Section 8(6); namely, review of consulting contracts exceeding $50,000.00 by the appropriations committee and the itemization report on intended department reallocations and reclassifications and contractual service contracts being furnished by the director of each state department to the senate and house appropriations committees with a copy of the same being sent to the fiscal agencies of both branches of the legislature. If the legislature did not desire to appropriate funds for consulting contracts it did not have to do so. Once having done so, the legislature does not possess, retain or have access to any form of adminis-

tration or monitoring thereof. I indicated in formal opinion No. 4873, dated May 2, 1975, addressed to Representative R. Hellman the following:

> "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.
>
> "* * *
>
> ". . . 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."

The executive branch of government is responsible for the implementation of appropriations acts, not the legislative branch of government. Therefore, in response to your question relative to Section 8(6) of Enrolled House Bill 4439, the General Appropriations Act, it is my opinion that said section is in violation of Const 1963, art 3, § 2 and is unconstitutional.

Secondly, you have requested my opinion relevant to the constitutionality of Section 13 of Enrolled House Bill 4439. Section 13 provides as follows:

> "(1) The director of the department of management and budget shall submit to the appropriations committees a separate detailed accounting of programs, positions and expenditures for all state data centers and all required data processing services and personnel necessary for proper implementation of ADP performance, not later than November 1, 1975.
>
> "The detailed accounting will be considered by the joint computer and data processing committee in a manner consistent with the appropriations committees procedure on all other appropriations requests.
>
> "(2) Purchase of proprietary computer software packages from commercial vendors must be approved by the joint computer and data processing committee before expenditures of any funds appropriated herein.
>
> "(3) New contracts or renewal of existing contracts with commercial vendors or with any agency which involve consulting services related to management systems, or data processing services must be approved by the joint computer and data processing committee prior to signing and before expenditure of any funds appropriated herein.
>
> "(4) Prior approval of the joint computer and data processing committee is required for all new configurations of ADP equipment or changes to existing configurations of ADP equipment before expenditure of any funds appropriated herein.

"(5) All limitations on expenditures of data processing funds included in this act are applicable regardless of funding source.

"(6) All provisions contained herein are subject to review and approval or disapproval by the joint computer and data processing committee of the senate and house appropriations committees.

"(7) Subject to the approval of the joint computer and data processing committee, agencies with excess reserve data processing capacity may furnish data processing services beyond those authorized in this act. The additional costs incurred to provide services are to be financed by charges made to requesting agencies."

As I recounted in answer to the constitutionality of Section 8(6) of Enrolled House Bill 4439 above, the legislature may not engage in executive functions in violation of Const 1963, art 3, § 2. The mandates of Section 13 are a direct invasion of the constitutional power of the executive branch of government to administer appropriations and, as such, I must conclude that Section 13 is unconstitutional.

In addition to the two sections above that have been discussed in light of Const 1963, art 3, § 2, it is necessary to review Section 6 of Enrolled House Bill 4439. Section 6 states:

"In addition to appropriations contained in this act, federal and other funds may be received and expended pursuant to certification by the head of the recipient department, instrumentality, or agency, that the funds do not require state appropriations either for matching purposes or to continue programs after the funds become unavailable. The funds shall be allotted for expenditure only after approval by the state administrative board upon recommendation of the state budget director, *following receipt of written approval by the chairman of the senate and house appropriations committees. Requests for approval under this provision shall be submitted on the fifteenth of each month by the state budget director to the senate and house appropriations committees, with a copy forwarded to the senate and house fiscal agencies.*" [Emphasis added]

It is apparent that the legislature, in enacting the underlined portion of Section 6, attempted to exercise executive functions relative to the dispersal of federal or other funds which may be received and expended by departments, instrumentalities or agencies which do not require state appropriations either for matching purposes or to continue programs after the funds become unavailable. I must declare the underlined portion of Section 6 to be unconstitutional for the same reasons discussed above concerning the constitutionality of Sections 8(6) and 13. Only the underlined portion of Section 6 is unconstitutional as being in violation of Const 1963, art 3, § 2. The remainder of Section 6 is severable and valid. See: OAG 1965-1966, No. 4575, p 389 (December 23, 1966).

Section 22 of Enrolled House Bill 4439 provides:

"No portion of this appropriation shall be considered a mandate to spend by the director. If, however, an emergency arises and he must seek a supplemental appropriation, he shall, when advised the appro-

priation is insufficient through the balance of the fiscal year, immediately notify the two appropriating committees, their fiscal agencies and the bureau of the budget by letter explaining the cause of the shortage and the amount and anticipated date supplemental funds will be needed. The only authorization to proceed with deficit spending may be made prior to statute by concurrent legislative resolution upon recommendation of the appropriations committees following a review of the department, instrumentality, or agency's requests for the supplemental funds."

Const 1963, art 4, § 19 states that "No appropriation shall be a mandate to spend. . . ." More importantly, Const 1963, art 5, § 18 states in pertinent part:

". . . *The governor* may submit amendments to appropriation bills to be offered in either house during consideration of the bill by that house and *shall submit bills to meet deficiencies in current appropriations.*" [Emphasis added]

It is apparent from a reading of this sentence of Const 1963, art 5, § 18 that the Governor is mandated by the constitution to take the action which the legislature has attempted to statutorily impose upon the director if as the legislature states ". . . an emergency arises and he must seek a supplemental appropriation . . ." The procedure outlined in Section 22 of Enrolled House Bill 4439 is beyond the ambit of authority recognized in the budgetary process of Const 1963, art 5, § 18 and, as such, is unconstitutional.

You have requested my consideration of two sections of Enrolled House Bill 4439 which appear to interfere with powers vested in constitutionally created commissions. Enrolled House Bill 4439, the General Government Appropriations Bill, Section 8(5) states:

"Increases in the rates of compensation including reallocations or reclassifications authorized by the civil service commission involving 10 or more persons in a single classification 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 recommendation."

Const 1963, art 11, § 5 provides for the state civil service system. In pertinent part, said section states as follows:

"* * *

"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, . . .

"* * *

"No person shall be appointed to or promoted in the classified service who has not been certified by the commission as qualified for such appointment or promotion. No appointments, promotions, demotions or removals in the classified service shall be made for religious, racial or partisan considerations.

"* * *

"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. The legislature may, by a majority vote of the members elected to and serving in each house, waive the notice and permit increases in rates of compensation to be effective at a time other than the start of a fiscal year. 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. Any reduction ordered by the legislature shall apply uniformly to all classes of employees affected by the increases and shall not adjust pay differentials already established by the civil service commission. The legislature may not reduce rates of compensation below those in effect at the time of the transmission of increases authorized by the commission.

"* * *"

It is apparent from a reading of these portions of Const 1963, art 11, § 5 that the Civil Service Commission classifies positions in the classified service according to their respective duties and responsibilities and increases in rates of compensation authorized by the commission are relative to these classifications.

Section 8(5) of Enrolled House Bill 4439 obviously is an attempt to infringe upon the constitutional authorization which is reposed in the Civil Service Commission. The Civil Service Commission is only mandated to notify the Governor of increases in compensation it authorizes. The Governor then transmits such increases to the legislature as part of his budget whenever *classifications* within the state classified service are affected by increases in rates of compensation. It was not the intention of the framers of the constitution of this state to mandate that the Civil Service Commission limit increases in rates of compensation, including reallocations or reclassifications it authorizes, to be effective only at the beginning of the fiscal year and require notice being given to the Governor, who shall transmit such increases to the legislature as part of its budget recommendation.

Increases in rates of compensation received by individual classified employees based upon a reallocation or reclassification have not been, and properly so according to the constitutional provision in question, required to be given to the Governor and to the legislature prior to their occurrence. This is a sole prerogative of the Civil Service Commission and any attempt on the part of the legislature to mandate that civil service notify the Governor and the legislature and *limit* such increases in rates of compensation based upon reallocation and reclassification is unconstitutional in light of Const 1963, art 11, § 5.

Your last question refers to Enrolled House Bill 4439 Section 67 which states:

"The department of civil rights after receiving a written complaint shall within 5 days serve a copy thereof upon the respondent and all persons it deems to be necessary parties and make prompt investigation in connection therewith. Within 90 days after a complaint is filed, the department shall determine whether it has jurisdiction and, if so, whether there is probable cause to believe that the person named in the complaint, hereinafter referred to as the respondent, has engaged or is engaging in any unlawful discriminatory practice. If it finds with respect to any respondent that it lacks jurisdiction or that probable cause does not exist, the commissioner shall issue and cause to be served on the complainant an order dismissing such allegations of said complaint as to such respondent."

Const 1963, art 5, § 29 states:

"There is hereby established a civil rights commission which shall consist of eight persons, not more than four of whom shall be members of the same political party, who shall be appointed by the governor, by and with the advice and consent of the senate, for four-year terms not more than two of which shall expire in the same year. It shall be the duty of the commission in a manner which may be prescribed by law to investigate alleged discrimination against any person because of religion, race, color or national origin in the enjoyment of the civil rights guaranteed by law and by this constitution, and to secure the equal protection of such civil rights without such discrimination. The legislature shall provide an annual appropriation for the effective operation of the commission.

"* * *

"The commission shall have power, in accordance with the provisions of this constitution and of general laws governing administrative agencies, to promulgate rules and regulations for its own procedures, to hold hearings, administer oaths, through court authorization to require the attendance of witnesses and the submission of records, to take testimony, and to issue appropriate orders. The commission shall have other powers provided by law to carry out its purposes. Nothing contained in this section shall be construed to diminish the right of any party to direct and immediate legal or equitable remedies in the courts of this state.

"* * *

"Appeals from final orders of the commission, including cease and desist orders and refusals to issue complaints, shall be tried de novo before the circuit court having jurisdiction provided by law."

Section 67 of Enrolled House Bill 4439 mandates that the Department of Civil Rights adopt a procedure calculated to ensure prompt action in regard to complaints filed with the department. The constitution mandates that the legislature provide an appropriation for effective operations, but the constitution vests solely in the Civil Rights Commission the power to promulgate rules for its own procedures.

In *Michigan Civil Rights Commission* v *Clark*, 390 Mich 717; 212 NW2d 921 (1973), the Michigan Supreme Court reviewed the responsibilities of the legislature relative to the Civil Rights Commission: The Court said:

> "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*." [Emphasis added] [p 726]

Thus, it is my opinion that Section 67 of Enrolled House Bill 4439 is an invasion of the constitutional authority to operate the Civil Rights Commission as is shown in Const 1963, art 5, § 29, and is, therefore, unconstitutional.

FRANK J. KELLEY,
Attorney General.

Attachment

February 10, 1975.

Honorable Gary Owen
State Representative
Capitol Building
Lansing, Michigan

Dear Representative Owen:

You have indicated that the 1975-76 Executive Budget Proposal would transfer the funding of certain liquor related operations in the Department of Commerce from the general fund to the liquor revolving fund. You note that, historically, the liquor revolving fund has only been used to pay for liquor inventory, transportation costs and costs associated with warehousing.

Specifically, you have requested my opinion concerning whether positions enumerated by the Governor for transfer to the liquor revolving fund may indeed be transferred, and if so, what other positions or tasks of the Liquor Control Commission might also be properly transferred to the liquor revolving fund.

1933 PA Ex Sess 10, MCLA 436.10; MSA 18.981 states:

> "Sec. 10. The commission is hereby authorized to maintain a revolving fund which fund is to be derived from the money deposited to the credit of the commission with the state treasurer. From time to time amounts shall be transferred from the revolving fund to the general fund in accordance with the provisions of Act No. 259 of the Public Acts of 1941, as amended, being sections 21.121 to 21.130, inclusive, of the Compiled Laws of 1948. The fund herein provided for is to be exclusively used for the purpose of replenishing, maintaining, warehousing and transporting the liquor stock into the various state liquor stores throughout the state. A monthly report thereof shall be made to the state treasurer and to the budget director which

shall contain an itemized account of all moneys received and all expenditures made by the commission during the month covered in the report. As amended PA 1952, No. 216, § 1, Imd. Eff. May 2; PA 1956, No. 161, § 1, Imd. Eff. April 16."

Initially I must advise you that no language exists in the state constitution which authorizes the creation of "revolving" funds. In fact, Const 1963, art 5, § 18 states, in pertinent part, that:

> "*The governor shall submit to the legislature at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail, for all operating funds, the proposed expenditures and estimated revenue of the state.* Proposed expenditures from any fund shall not exceed the estimated revenue thereof. . . ." [Emphasis supplied]

In regard to the specific question you have raised it is my opinion that, in the absence of any constitutional impediment or restriction, the legislature may transfer the positions in question to the liquor revolving fund. Authority for this position is available in CJS, STATES, § 161, p 1203, wherein it is noted:

> "The power to appropriate the money of the state is legislative power, and the legislature is supreme in matters relating to appropriations as to which no constitutional restrictions exist. The discretion and control of the legislature over appropriations cannot be limited or destroyed by the acts of the proceeding legislatures. . . ."
>
> ". . . [A]s a general rule, the legislature may not delegate the power of appropriation . . ."

In addition, other jurisdictions have affirmed the proposition that funds may be transferred from a special fund to the general fund. See: *Department of Public Welfare* v *Haas,* 154 NW2d 265 (1958); *Gulf Ins. Co.* v *James,* 185 SW2d 966 (945); *Rein* v *Johnson, et al,* 30 NW2d 548 (1947). Additionally, I concluded in a letter addressed to then Representative William R. Copeland, dated December 8, 1970, that the legislature was not prohibited by any constitutional provision or equitable principle from transferring funds from the motor vehicle accident claims fund, created by 1965 PA 198, MCLA 257.1101 *et seq;* MSA 9.2801 *et seq,* to the general fund where such transfer would not prejudice present or future liabilities of the fund.

Responding to the second issue you have raised; namely, the authority to transfer other positions or tasks of the Liquor Control Commission to the liquor revolving fund, I must answer by reaffirming the response to the initial question posed. The legislature can transfer funds for whatever purpose it deems necessary. The revolving fund in question is not immune from obligations that the legislature might choose to assess against it inasmuch as the legislature alone is responsible for the appropriations state agencies receive.

I trust the foregoing sufficiently responds to your request.

Very truly yours,
FRANK J. KELLEY,
Attorney General.