The duties associated with membership on the plat board not being part of the duties of their regular offices, the members of the board may receive additional compensation as provided by statute.

Shortly after the enactment of the Subdivision Control Act of 1967, *supra*, a letter opinion issued by me dated July 25, 1969, considered the question of compensation to members of the county plat board under the provisions of the new law. In that opinion it was determined that the members of the county plat board, as well as members of three other boards whose compensation was fixed by a comparable statutory provision, were entitled to receive compensation at the same rate set for payment to the members of the board of commissioners.

Therefore, your question is answered in the affirmative. The formal opinion found at II OAG, 1957-1958, No 3131, p 162 (June 9, 1958), should be regarded as superseded by subsequent constitutional and statutory revisions.

FRANK J. KELLEY,
Attorney General.

751110.1

ADMINISTRATIVE LAW: Rules exceeding statutory authority.

DEDICATION: Right of way shown by plan on file.

HIGHWAYS AND ROADS: Dedication.

A rule adopted by the Department of State Highways and Transportation mandating dedication to public use by a proprietor of a portion of his land needed to comport with a state trunkline highway plan on file, which plan indicates right of way widths in excess of existing trunkline right of way widths, is invalid.

Opinion No. 4906 November 10, 1975.

Mr. John P. Woodford
Director
Michigan Department of State Highways
and Transportation
Lansing, Michigan

Mr. Allison Green
State Treasurer
Michigan Department of Treasury
Lansing, Michigan

By memorandum to the Highway Division of the Department of Attorney General, Mr. G. J. McCarthy, Deputy Director, Bureau of Highways, Michigan Department of State Highways and Transportation, stated that the Taubman Company of Grand Rapids, Michigan, has requested approval by the Department of a preliminary plat, known as the Woodland Plat,

located along M-37 in Kentwood, Michigan, which is submitted pursuant to 1967 PA 288, MCLA 560.101 *et seq;* MSA 26.430(101) *et seq.*

The existing right of way of M-37 at subject location is presently 100 feet in width which accommodates a 4-lane traffic configuration. The Department of State Highways and Transportation has a highway plan on file at its district and main offices for a future highway improvement project which shows a proposed right of way width of 150 feet at subject location which would extend the right of way 25 feet onto the proposed Woodland Plat.

Mr. McCarthy stated in his memorandum that the Department of State Highways and Transportation, pursuant to 1967 PA 288, § 184, MCLA 560.184; MSA 26.430(184), has demanded as a condition to the department's approving the plat that the Taubman Company dedicate to public use the subject 25 feet of its land to accommodate the highway plan on file. The Taubman Company refused to dedicate the 25 feet stating in a letter to the Department that the department should use its condemnation authority when and if it needs additional right of way at the time of the highway widening project. Mr. McCarthy has asked for advice as to the validity of the position of the Department of State Highways and Transportation in demanding that the Taubman Company dedicate the subject 25 feet of its property to accommodate the proposed future highway improvement project as shown by the highway plans on file.

1967 PA 288, § 184, *supra,* in pertinent part provides:

> "Sec. 184. (1) The department of state highways may require, where a plat abuts a state trunk line highway, *if the existing right of way was not previously dedicated to public use or acquired in fee simple, that there be included within the plat boundary and description the area within the existing right of way and that such area be dedicated to public use if it is the proprietor's land.* The department of state highways may also require the following as a condition of approval for highways and streets shown on the final plat:
>
> "(a) Conformance in width and location to the plan on file at its main and district offices for state trunk line highways."

1967 PA 288, § 184(1), *supra,* expressly authorizes the Department of State Highways to require a proprietor to dedicate to public use that portion of his land lying within the existing right of way which had not previously been dedicated or acquired for highway purposes.

There are many miles of state trunk line highway right of way that were established by user under 1909 PA 283, § 20, MCLA 221.20; MSA 9.21. Highways by user are not established by recorded dedication or instruments of conveyance but rather exist by virtue of implied dedication imposed by statute. *Eager* v *State Highway Commissioner,* 376 Mich 148 (1965). Dedication pursuant to 1967 PA 288, § 184(1), *supra,* would establish record title of such rights of way.

Although 1967 PA 288, § 184(1)(a), *supra,* authorizes the department to require the proprietor to design his streets and highways in his plat to conform to the width and location of the state trunk line highways shown

on the plan on file, there is no authority expressed to require dedication of that land to public use in excess of existing state trunk line highway right of way.

Appearing in the Administrative Code of 1967, however, is R 560.203 which in relevant part reads:

> "Rule 203. (1) To provide for expansion and improvement of state trunk line highways, when a plat abuts a state trunk line highway or any portion of the plat is within the area shown by the 'Plan on File' to be required for expansion of an existing state trunk line highway, it shall conform to the Plan on File.
>
> "(4) When the future right-of-way required, as shown by the Plan on File, is greater than the existing right-of-way it shall be dedicated to the public use and so designated on the plat."

The quoted rule mandates dedication to public use by the proprietor that portion of his land which is necessary to comport with the state trunk line highway plan on file even though the right of way widths appearing on the plan on file exceed those widths of existing state trunk line right of way. This rule is patently beyond the scope of 1967 PA 288, § 184(1), *supra*, and invalid.

I am mindful of the decision in *Ridgefield Land Co* v *City of Detroit*, 241 Mich 468 (1928), which held that a city planning commission pursuant to authority granted to it by a city charter may properly require a platter of land to dedicate land for the streets shown on his plat to conform to those streets appearing in a master plan of the city. Such conditions, the court said, are reasonable and relate to the public welfare. Also, in *Ridgemont Development Co* v *City of East Detroit*, 358 Mich 387 (1960), the court concluded that although the city did not have statutory authority to require dedication of two lots for park purposes, the city did have authority to require dedication of land necessary to accommodate the widths of streets shown on the city's master plans.

However, more current court decisions lend support to the proposition that the authority to require dedication of a proprietor's land for public purposes without the payment of compensation is greatly limited as is the authority to require a proprietor of a plat to reserve the use of his land for future condemnation for public purposes.

In *Gordon* v *Warren Planning Commission*, 29 Mich App 309 (1971), the court said at page 327:

> "The conceptual difference between requiring a yard setback for light and air (which the State need not pay for) and requiring that land be set aside for a public use (which, before it can be put to that use, the State must pay for) may not be readily explicable. It is, nevertheless, perfectly clear that there is a difference, a constitutional difference, between telling a property owner that he must provide space between his building and that of his neighbor and telling him to set aside land for possible future condemnation.
>
> "Just as the taking of property without payment cannot, except in extraordinary circumstances, be justified as an exercise of the police

power, so too the State may not, in the name of the police power, require a property owner to refrain indefinitely and without payment from using and enjoying his property. The Michigan legislature did not, when it adopted zoning enabling legislation, ignore this constitutional limitation; it did not authorize local units of government to use the police power to require the reservation of property that a public authority might some day wish to condemn."

Upon appeal to the Supreme Court it was held in *Gordon* v *Warren Planning Commission*, 388 Mich 82 (1972), as follows:

"We agree with the Court of Appeals that this ordinance contains none of the safeguards which could sustain its constitutionality. The city's master thoroughfare plan was adopted without notice to plaintiffs. The ordinance contains no time limit for resolution of the question of whether the land will ever be condemned. *The ordinance, in effect, requires the dedication by plaintiffs of a large portion of their property for public purposes without any provision for compensation, and,* if a condemnation authority does eventually condemn the land, it could very well be considerably depreciated from its present worth. *For each of these reasons, we hold the zoning ordinance unconstitutional.*"

Nothing herein stated should be read as prohibiting the voluntary dedication of land to public use by the proprietor without the payment of just compensation.

FRANK J. KELLEY,
Attorney General.

751202.1

SCHOOLS AND SCHOOL DISTRICTS: School Aid.

GOVERNOR: Veto Power.

The gubernatorial veto of an appropriation for the current fiscal year contained in the school aid act prevents the appropriation from taking effect.

The gubernatorial veto of an appropriation for a future fiscal year contained in the school aid act prevents the future appropriation from taking effect.

The veto of an act or a part of an act that was intended to repeal an existing law results in the continued viability of the existing law.

Opinion No. 4910 December 2, 1975.

Hon. Bobby D. Crim
House of Representatives
Capitol Building
Lansing, Michigan

Hon. Dale Kildee
State Senator
Capitol Building
Lansing, Michigan

I am in receipt of your recent letter wherein four questions were posed relevant to the Governor's veto message of September 10, 1975 affecting