

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.

75/202.1

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

then Enrolled House Bill 4814, which when signed, became 1975 PA 261; MCLA 388.1105 *et seq*; MSA 15.1919(502) *et seq*.

The veto message in pertinent part, stated:

"The item of which I disapprove is as follows:

Intermediate school district grants \$900,000

"My budget recommendation provided for \$10,100,000 for state aid to intermediate school districts in 1975-76. This amount represented an increase of \$500,000 (5.2%) over the actual 1974-75 level of state support. House Bill 4814 as passed provides \$11 million, a 14.5% increase, for this program. The \$900,000 increase over my recommendation for intermediate school districts cannot be supported in light of present fiscal circumstances. My veto of this item reverts maximum funding for this program back to the 1974-75 Act level of \$10,000,000."

Although some question might arise as to whether the Governor's veto affected § 81 or 83 of 1975 PA 261, it is apparent by the delineation and initials on the original bill signed by the Governor that § 81 was intended to be vetoed.

Section 81 states:

"(1) From the amount appropriated in section 11, there is allocated to intermediate districts as established under the school code of 1955, the sum necessary but not to exceed \$11,000,000.00 in 1975-76, \$12,300,000.00 in 1976-77, \$13,500,000.00 in 1977-78, \$14,700,000.00 in 1978-79, and \$16,200,000.00 in 1979-80 to provide state aid to intermediate school districts. There shall be allocated to each intermediate district a sum obtained by multiplying the number of pupils in membership in the constituent districts of the intermediate district by \$9.67 each in 1975-76, \$10.33 each in 1976-77, \$11.00 each in 1977-78, \$11.67 each in 1978-79, and \$12.33 each in 1979-80, which shall be reduced by a sum equal to .18 mill in 1975-76, .16 mill in 1976-77, .14 mill in 1977-78, .12 mill in 1978-79, and .1 mill thereafter on the state equalized valuation of the property in the intermediate district, or for any intermediate district having a fixed allocation of less than .18 mill in 1975-76, .16 mill in 1976-77, .14 mill in 1977-78, .12 mill in 1978-79, and .1 mill thereafter adopted as a separate limitation pursuant to section 6 of article 9 of the state constitution of 1963, shall be reduced by a sum equal to the fixed allocation levied on the state equalized valuation of the property in the intermediate district. However, an intermediate district shall not receive less than an 8% increase in 1975-76, a 6% increase in 1976-77, a 4% increase in 1977-78, and a 2% increase in 1978-79, nor more than a \$1.50 per pupil increase in any year, in state aid under this subsection over the total state aid received under this subsection the previous year.

"(2) Intermediate districts formed by the consolidation or annexation of 2 or more intermediate districts or the attachment of a total intermediate district to another intermediate district shall be entitled to an additional allotment of \$3,500.00 for each intermediate

district included in the new district for a period of 3 years following consolidation, annexation, or attachment." [Emphasis added]

Your first question states:

"Is the Governor's veto of Section 81 of Enrolled House Bill 4814 a nullity because of the defects cited and because it does not effect its stated intent?"

Const 1963, art 5, § 19 articulates the veto power of the Governor. It states:

"The governor may disapprove any distinct item or items appropriating moneys in any appropriation bill. The part or parts approved shall become law, and the item or items disapproved shall be void unless repassed according to the method prescribed for the passage of other bills over the executive veto."

The defects you cited in your letter concern which section of 1975 PA 261 was vetoed and the actual amount of school aid reduced by the Governor's veto.

Reference to the Governor's veto message of September 10, 1975 and a copy of the bill attached thereto with § 81 lined out and initialed by the Governor puts to rest any doubt that the Governor vetoed all appropriations contained in § 81. The discussion in the Governor's veto message and the discrepancy in the figures are surplusage to the veto itself. Therefore, the answer to your first question is that the Governor's veto was not a nullity.

Your second question reads:

"If the Governor's veto does in fact strike Section 81 of Enrolled House Bill 4884, what is the appropriation ceiling for funding this section in 1975-76? \$10,100,000 as was appropriated for 1974-75 and as the Governor's message states was his intent? Or \$9,600,000, the amount to which the 1974-75 appropriation was reduced pursuant to Executive Order 1974-11?"

Inasmuch as the Governor vetoed a proposed amendment to 1972 PA 258; MCLA 388.1101 *et seq*; MSA 15.1919(501) *et seq*, the existing statutory provision remains in effect. 1972 PA 258, § 81; MCLA 388.1181; MSA 15.1919(581) was last amended by 1974 PA 242 to read as follows:

"(1) From the amount appropriated in section 11, there is allocated to intermediate districts as established under the school code of 1955, the sum necessary but not to exceed \$10,100,000.00 to provide state aid to intermediate districts. There shall be allocated to each intermediate district a sum obtained by multiplying the number of pupils in membership in the constituent districts of the intermediate district by \$9.00 each, which shall be reduced by a sum equal to .2 mill on the state equalized valuation of the property in the intermediate district, or for any intermediate district having a fixed allocation of less than .2 mill adopted as a separate limitation pursuant to section 6 of article 9 of the state constitution of 1963, shall be reduced by a sum equal to the fixed allocation levied on the state

equalized valuation of the property in the intermediate district. However, an intermediate district shall not receive less than a 10% increase, nor more than a \$1.50 per pupil increase, in state aid under this subsection in 1974-75 over the total state aid received under sections 81 and 82 in 1973-74.

“(2) Intermediate districts formed by the consolidation or annexation of 2 or more intermediate districts or the attachment of a total intermediate district to another intermediate district shall be entitled to an additional allotment of \$3,500.00 for each intermediate district included in the new district for a period of 3 years following consolidation, annexation, or attachment.” MCLA 388.1181; MSA 15.1919(502)

Reading the first sentence of the section as it exists indicates that intermediate school districts shall receive an allocation not to exceed \$10,100,000. The funds shall be derived from the school aid fund and any deficiencies are to be secured from the state general fund as authorized by 1972 PA 258, § 11; MCLA 388.1111; MSA 15.1919(511).

The second problem alluded to in your question which involves Executive Order 1974-11 and its reduction of appropriations for intermediate school districts from \$10,100,000 to \$9,600,000 effectuated therein, must be reviewed in light of whether funds appropriated by § 81(1) were only applicable to fiscal year 1974-75 or if § 81(1) continues to have validity in light of the Governor's veto of its amended form in 1975 PA 261, *supra*. The Supreme Court in *Oakland Board of Education v Superintendent of Public Instruction*, 392 Mich 613; 211 NW2d 345 (1974) had occasion to review a mandamus action which sought to compel the State Treasurer to pay sums of money allegedly due the plaintiff pursuant to the state school aid act.

1970 PA 100, § 16a(5); MCLA 388.611; MSA 15.1919(51) provided:

“Beginning in 1971-72 from the amount appropriated in section 1 there is appropriated a separate fund of \$400,000.00 for the purpose of providing funds to intermediate districts which operate data processing programs, using a service fee method of financing on a co-operative basis with local school districts.” MCLA 388.611; MSA 15.1919(51)

In 1971 the legislature adopted a new section (1971 PA 134, § 16a(5)) for 1970 PA 100, § 16a(5), *supra*, which never became law because the Governor invoked his item veto and disapproved the \$400,000.00 appropriation. The Supreme Court held that the item veto of 1971 PA 134, § 16a(5) had the effect of retaining 1970 PA 100, § 16a(5), *supra*, and quoting from *State v Rosellini*, 55 Wash 2d 554, 549; 348 P2d 971, 973 (1960):

“Where an act or part of an act repeals or amends an existing act, the veto of the act or part thereof prevents the intended repeal or amendment from taking effect. . . .”

Hence I must conclude that 1972 PA 258, § 81, *supra*, as last amended by 1974 PA 242, remains in effect. The effect of Executive Order 1974-11,

reducing the allocation of 1972 PA 258, § 81, *supra*, was intended to and could only affect fiscal year 1974-75.

Therefore, it is my opinion that 1972 PA 258, § 81, *supra*, provides \$10,100,000 for allocation to intermediate school districts. Such funds are to be provided from the school aid fund and any deficiencies therein, pursuant to 1972 PA 258, § 11; MCLA 388.1111; MSA 15.1919(511), are to be derived from the state general fund for the fiscal year in question.

Your third question reads:

"If the Governor's veto leaves Section 81 of Act No. 258 of the Public Acts of 1972 otherwise intact, is the 10% increase guarantee in the last sentence, although specified for 1974-75, in effect again for 1975-76? If not, does the state allocate the estimated \$8,000,000 or slightly more than the existing formula will require without the 10% increase guarantee—even though this is more than three times the amount of reduction the Governor stated he intended?"

In response to the first issue raised in your third question, it is apparent that § 81 contains language relative to the amount of state aid an intermediate school district was to receive in fiscal year 1974-75. This language could only have effect in said fiscal period since the legislature directed an increase over the amount intermediate school districts received in fiscal year 1973-74. Hence, distribution of the allocation to intermediate school districts shall continue according to the formula provided for in 1974 PA 242, § 81, *supra*, without regard to the last sentence of that section which contains the 10% growth factor and the \$1.50 per pupil increase ceiling. The answer to the first issue in your third question renders it unnecessary to respond to the second issue.

Your fourth question states:

"What is the effect of the Governor's veto upon the appropriations and allocation plans the Legislature enacted for 1976-77, 1977-78, 1978-79 and 1979-80? Can the Governor veto the language of a continuing appropriation bill when provisions will not come into effect until future fiscal years?"

The Governor's veto of 1975 PA 261, § 81, had the effect of vetoing the entire section including the language that referred to appropriations for future fiscal years.¹ Such veto is within the Governor's lawful authority under Const 1963, art 5, § 14.

It should be noted that the legislative approach of providing for appropriations to school districts for future years is not in keeping with its usual method of making annual appropriations for the forthcoming fiscal year. Therefore the conclusions stated above have no application to annual appropriations made by the legislature.

FRANK J. KELLEY,
Attorney General.

¹This opinion does not address the validity of a continuing appropriation. See: *Oakland Board of Education v Superintendent of Public Instruction, supra*, at 620, footnote #5.