

a particular office. Because the recall process attempts to directly countermand the expressed intention of the people, certain restrictions not applicable to the initiative process, such as the 90-day limitation on signatures, are not unreasonable.

The 90-day limitation applicable to signatures on a referendum petition which is the subject of your second question is found in Const 1963, art 2, § 9:

"The people reserve to themselves the power . . . to approve or reject laws enacted by the legislature, called the referendum. . . . The power of referendum does not extend to acts making appropriations for state institutions or to meet deficiencies in state funds and must be invoked in the manner prescribed by law within 90 days following the final adjournment of the legislative session at which the law was enacted. . . ."

Inasmuch as the 90-day restriction is imposed by the Constitution itself, it is manifest that the restriction is constitutional. As was noted previously, the 180-day restriction on signatures on initiatory petitions was deemed to violate the State Constitution. It is only when a part of the State Constitution is held to conflict with a provision of the United States Constitution that a state provision will be struck down as unconstitutional.

Therefore, to answer your questions, it is my opinion that the 90-day requirement as it applies to signatures on both recall and referendum petitions is constitutional.

FRANK J. KELLEY,
Attorney General.

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TAX ASSESSMENTS: Distribution of money received by rounding out state equalization factor.

The "excess of roll" that results from the rounding out of the total authorized millage belongs to the contingent fund of the township. However, the rounding out of state equalized valuations of assessed property must be shared by the taxing authorities in proportion to their percentage of the total tax levy.

Opinion No. 5000

April 19, 1976.

Mr. Robert E. Guenzel
Corporation Counsel
Washtenaw County Building
Ann Arbor, Michigan 48107

You have requested my opinion concerning the following question:

"What is the proper distribution between various units of government at tax settlement time of excess money received because a local unit of government rounds up its state equalization factor."

It is your position, shared by the Local Audit Division of the Michigan Department of Treasury:

"* * * that any excess funds collected by the rounding up of the

state equalization factor should be divided proportionately between the various units of government who collect taxes.”

In other words, it is your opinion, and that of the Department of Treasury, that any excess funds resulting from the rounding-up of state equalization factors belong to the tax-levying units of government in proportion to their share of the total tax levy.

You have attached to your letter an opinion dated July 23, 1971, rendered to the Michigan Township Association by their counsel, which holds to the contrary by concluding that such “excess” belongs to the contingent fund of the township, i.e., the unit of government which collects the property taxes for itself, the county, and the schools. This 1971 opinion reaches that result by characterizing the excess funds resulting from the rounding-up of state equalization factors as an “excess of roll.”

Section 39 of the General Property Tax Act, MCLA 211.39; MSA 7.80, provides that

“* * * For the purpose of avoiding fractions in computation, the assessor may add to the amount of the several taxes to be raised not more than $\frac{1}{2}$ of 1%. The excess shall belong to the contingent fund of the township, city, or village, except that in a city where, by special provision, county taxes are now collected by the county treasurer, the excess of county taxes shall belong to the contingent fund of the county.

* * *”

By way of illustration, if the total taxes to be collected for township, school and county purposes aggregate 54.82 mills, the assessor may, “for the purpose of avoiding fractions in computation,” compute the property tax by applying 55 mills to the state equalized valuation of individual properties. The “excess” generated by the difference between 55 mills and 54.82 mills (.18 mills) belongs, in the normal case, to the contingent fund of the tax-collecting unit, i.e., the township or city. These funds (generated by the .18 mills) are known as “excess of roll.”

Since the landmark decision of *Pittsfield School District v Washtenaw County*, 341 Mich 388; 67 NW2d 165 (1954), it has been universally acknowledged that millages must be levied against the state equalized value of property. The state equalized value of property, being fixed at and constitutionally limited to 50 percent of true cash or market value, is derived from county and state equalization proceedings. County equalization is designed to establish the aggregate value of taxable properties within every assessing district in the county at an identical proportion of true cash value. State equalization is designed to establish an aggregate value of taxable property within each county of the state at an identical 50 percent of true cash value.

In accomplishing the constitutionally-mandated uniformity, equalization adds amounts to assessing districts and counties which have failed to achieve uniform assessment at 50 percent of true cash value. These adjustments are spread back upon the assessed value of individual properties within an assessing district by the use of “equalization factors.” Illustratively, if a township assesses at an exact 40 percent of true cash value, it would be assigned a state equalization factor of 1.25. Multiplication of every assessment (which ideally would be the mathematical equivalent of 40 percent of

true cash value) by this factor of 1.25 would result in a state equalized value for every property at 50 percent of true cash value.

Local assessment levels are seldom at an exact 40 percent or 25 percent. They are more likely to be at 39.87 or 24.89 percent of true cash value. Consequently, the state equalization factor generally has several digits.

The statutorily approved Assessor's Manual¹ contains the following illustration in Chapter XVI, page 28:

"Example to Determine State Equalization Factor for Real or Personal Property

$$\frac{\text{State Equalized Value of Twp/City(Real Property)}}{\text{Assessed Value of Twp/City(Real Property)}} = \text{Factor}$$

$$\frac{\$2,818,770(\text{Real})}{\$1,293,950(\text{Real})} = 2.17842266$$

or 2.1784227

or 2.178423 (always round up the last digit)

or 2.17843

or 2.1785 The same procedure is used

or 2.179 for Personal Property"

or 2.18

It being the duty of all assessing officials to use the Assessor's Manual in preparing assessments, a township or city with a state equalization factor of 2.17842266 would determine the state equalized value of individual property within the unit by multiplying its assessed value by a factor of 2.18. The product of this multiplication would have to be "clearly set forth" upon the tax roll and the tax statement sent to the taxable owner. 1893 PA 206, § 24b; MCLA 211.24b; MSA 7.24(2). The actual property tax would result from multiplying this state equalized value by the total permitted millage levy (which includes the "excess of roll").

I have indicated earlier in this opinion that the total millage levy of 54.82 would allow, pursuant to § 39 of the General Property Tax Act, an actual levy (including "Excess of roll") of 55 mills. Assuming an assessed value of \$10,000.00, and a mathematically-exact state equalization factor of 2.17842266, the state equalized value of that individual property or its tax base would amount to \$21,784.23. However, by virtue of Chapter XVI of the Manual, the state equalized value of that property is generally shown on the tax roll and tax statement as \$21,800.00. The hypothetical 55 mills is consequently multiplied by a state equalized value of \$21,800.00 and the result (\$1,199.00) is the total tax upon that property. If the mathematically exact state equalized value of \$21,784.23 had been multiplied by 55 mills,

¹ MCLA 211.721; MSA 7.40 provides:

"Beginning with the tax assessing year 1963, all assessing officials, whose duty it is to assess real or personal property on which real or personal property taxes are levied by any taxing unit of the state, shall use only the official manual or manuals, with their latest supplements, as prepared or approved by the state tax commission as a guide in preparing assessments."

Pursuant thereto, the State Tax Commission has published the State Assessors Manual, which is available to any person at cost.

a property tax of \$1,198.13 would have resulted. The question you have propounded deals with the 87 cent difference in tax collection generated by the rounding-up of the state equalized valuation.² The county, school district and township are entitled to receive tax proceeds which are the product of their authorized millage, multiplied by the actual state equalized value shown in the tax roll and tax statement; i.e., they are entitled to receive the actual amount billed and paid for county, school and township purposes.

I agree with the proposition that "excess of roll" which results from the rounding out of a total *authorized millage* belongs to the contingent fund of the township. However, the rounding out of *state equalized valuations* must be shared by the taxing authorities in proportion to their percentage of the total tax levy.

FRANK J. KELLEY,
Attorney General.

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BONDS: Rehabilitation of blighted areas

HOME RULE CITIES: Rehabilitation of blighted areas

A home rule city is authorized to undertake a program to rehabilitate blighted areas and issue general obligation bonds to pay for the cost thereof without vote of the electors.

A home rule city may not spread the cost of repayment of a blighted area rehabilitation bond issue on a portion of the city leaving other portions of the city free from the obligation of the bond issue.

Opinion No. 4970

April 20, 1976.

Honorable Gerrit Hasper
State Representative, 96th District
The Capitol
Lansing, Michigan 48901

I am in receipt of your letter wherein you request my opinion on the following questions:

"(1) Is it legal for the City to spread the costs of a bond issue on areas of the City which cannot benefit?

"(2) Is it legal to tax homeowners for the direct benefit of private business enterprises?

"(3) Is it legal to use unvoted City bond funds to purchase property which the Federal government refuses to purchase under Federal laws and which tax burden was not included in the Ordinance which was voted on by all the voters and not restricted to property owners?

Home rule cities have authority to issue bonds under 1945 PA 344, MCLA 125.71 *et seq*; MSA 5.3501 *et seq*, which is entitled:

² I recognize, of course, that a township may have a state equalized value of \$21,800,000, in which event the total of this difference might amount to \$87,000.