times, does the inclusion of pension benefits (based on the last three years method) into a newly negotiated agreement with one department, whose contract is up, require the benefits to be given automatically to the department who is under an existing contract, or can you wait until that collective bargaining agreement expires?"

Just as in OAG 4811, *supra,* the answer to your question rests on the wording of the statute. MCLA 38.556(1)(e); MSA 5.3375(6)(1)(e) provides:

> " 'Average final compensation' shall mean the average of the highest annual compensation received by a member during a period of 5 consecutive years of service contained within his 10 years of service immediately preceding his retirement, or leaving service, or, if so provided in a collective bargaining agreement entered into between a municipality under this act and the appropriate recognized bargaining agent, may mean the average of the 3 years of highest annual compensation received by a member during his 10 years of service immediately preceding his retirement or leaving service. . . ."

The three year averaging provision may be applied to individual police officers or firemen only when "so provided in a collective bargaining agreement entered into between a municipality under this act and . . . [their] appropriate recognized bargaining agent". No statutory requirement is imposed that three year averaging be included in any agreement. Three year averaging, thus, is merely a subject for collective bargaining. The municipality and its employees may, of course, reach a final collective bargaining agreement without any reference in the agreement to three year averaging.

It is, therefore, my opinion that the inclusion of three year averaging in a collective bargaining agreement with either the fire or police departments does not require the inclusion of the same provision in the collective bargaining agreement with the other department.

FRANK J. KELLEY,
Attorney General.

760707.1

SCHOOLS AND SCHOOL DISTRICTS: Authority to direct establishment of school for juvenile court wards.

COUNTIES: Authority to direct establishment of school for juvenile court wards.

The decision to establish a school for juvenile court wards rests with the intermediate school district board rather than the county board of commissioners.

If the intermediate district board deems a school for juvenile court wards unnecessary such children attend the local schools of the district where the juvenile home is located.

Opinion No. 5036 July 7, 1976.

Honorable Gilbert E. Bursley
State Senator
The Capitol
Lansing, Michigan

You have requested my opinion on the following question:

"1. Under Section 340.298k of the School Code of 1955, can the County Board of Commissioners mandate the operation of the Juvenile Detention School program to the Intermediate School District? If such a program can be mandated, does the County Board of Commissioners have any financial responsibility in helping to provide such a program?

"2. If this program cannot be mandated to the Intermediate School District, then, who has the responsibility for providing an educational program for Juvenile Court Wards?"

The statutory section to which you refer in your question is in The School Code of 1955, 1955 PA 269, § 298a (1)(k); MCLA 340.298a(1)(k); MSA 15.3298(1)(1)(k), which provides:

"The [intermediate district] board shall:

* * *

"(k) When directed by the county board of commissioners, establish, *if the [intermediate district] board deems necessary*, a school for those persons of school age who are housed in children's homes operated by the juvenile court or who are living at home but assigned to the school by a juvenile court. The board of education may lease or purchase sites for the schools, build, lease, or rent housing facilities for the schools, may employ teaching and supervisory staffs as necessary to operate the schools, is authorized to make rules covering the operation of the schools, may exclude students for reason of persistent misbehavior, or bodily conditions and habits disturbing to the orderly conduct of the school, is authorized to classify and promote students for instructional purposes, and otherwise do all those things necessary to the proper conduct of the school." (emphasis added)

As seen from the above quoted statutory provision, the intermediate school district board of education has discretionary authority concerning the establishment of a juvenile school in response to a direction by the county board of commissioners to establish such a school. Therefore, the answer to the first part of question number 1 is that the county board of commissioners cannot mandate the operation of a juvenile school by the intermediate school district.

This response obviates an answer to the second part of question number 1.

If the intermediate school district board of education has deemed a school for juvenile court wards unnecessary, then the answer to your second question may be found by a reading of another section of The School Code of 1955, 1955 PA 269, § 358; MCLA 340.358; MSA 15.3358, which provides:

"*Children placed under the order or direction of courts or child-*

placing agencies in licensed homes, and children whose parents or legal guardians are unable to provide a home for them and who are placed in licensed homes or in homes of relatives in the school district for the purpose of securing a suitable home for said children and not for an educational purpose, *shall be considered residents for educational purposes of the school district where the homes in which they are living are located, and as such shall be admitted to the school in such district,* except as provided in section 945 of this act." (emphasis added)

Thus, if the intermediate school district declines to establish a special school for children in children's homes operated by the juvenile court, then such children are to be considered educational residents of the local school district where the home in which they are living is located, and they are to attend that local school district's schools.

It is therefore my opinion that, based upon the provisions of The School Code of 1955, *supra,* the decision as to whether to establish a school for wards of the juvenile court ultimately rests with the intermediate school district board of education, not the county board of commissioners. In the event that the intermediate district board deems such a school unnecessary, then those children should be provided an education by the local school district in which the juvenile home where they are living is located.

FRANK J. KELLEY,
Attorney General.

760708.1

OSTEOPATHS: Privilege of treating patients in a county hospital.

HOSPITALS: Exclusion of osteopaths from practice in county hospitals.

The board of hospital trustees of a county hospital may not deny to osteopaths the privilege of treating patients in a county hospital.

Opinion No. 5049 July 8, 1976.

Honorable F. Robert Edwards
State Representative, 79th District
P. O. Box 119
Lansing, Michigan

You have asked for my opinion as to whether Hurley Hospital in Flint, Michigan, may exclude doctors of osteopathy from treating patients in that hospital. You state in your letter that this hospital is a county hospital and is, therefore, governed by the provisions of 1913 PA 350, MCLA 331.151 *et seq;* MSA 14.1131 *et seq.*

Under 1913 PA 350, *supra,* § 4, the legislature vested in the board of trustees of Hurley Hospital the control, management of the hospital and the power to grant hospital privileges to doctors to practice medicine in that institution. This board is a body corporate. Its rule-making powers are set forth in 1913 PA 350, § 4, *supra,* which reads in pertinent part: