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RETIREMENT AND PENSIONS: Local government retirement programs.

RETIREMENT AND PENSIONS: State not guarantor of local retirement programs.

CONSTITUTION OF MICHIGAN: Art 9, § 24.

The state is not a guarantor of local government retirement programs.

Opinion No. 5076

August 9, 1976.

Mr. Gerald H. Miller
Director
Department of Management and Budget
Lewis Cass Building
Lansing, Michigan 48913

You have asked for my opinion on the following questions:

“(i) Is the State of Michigan ultimately liable for the funding of a local government retirement program in the event the local unit of government does not or cannot make the legally required appropriations?”

“(ii) Is the State of Michigan the ultimate guarantor of benefits promised by local government retirement programs in the event of the insolvency of the local program or the local unit of government?”

Local government retirement programs fall into three general categories. These are: (1) retirement programs adopted as part of a municipal charter [See *Detroit Police Officers Association v Detroit*, 391 Mich 44; 214 NW2d 803 (1974)] (2) retirement programs adopted by ordinance as authorized and circumscribed by state law [e.g., county retirement systems under MCLA 46.12a; MSA 5.333(1)] and (3) participation by the local unit in the Municipal Employees' Retirement System under the terms of 1945 PA 135; MCLA 38.601 *et seq*; MSA 5.4001 *et seq*, in which the assets of the participating local units are pooled to gain the economy and expertise of a large-scale retirement system. Under each of these plans, the municipality, not the state, undertakes certain obligations.

Const 1963, art 9, § 24 provides:

“The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby.

“Financial benefits arising on account of service rendered in each fiscal year shall be funded during that year and such funding shall not be used for financing unfunded accrued liabilities.” (emphasis added)

Thus, Const 1963, art 9, § 24 contains no express language making the state ultimately liable either for funding local retirement programs or for paying their benefits. That omission is significant, since in questions of constitution construction

“[t]he primary rule is the rule of ‘common understanding’ described by Justice Cooley:

“‘A constitution is made for the people and by the people. *The interpretation that should be given it is that which reasonable-minds, the great mass of the people themselves, would give it.* “For as the Constitution does not derive its force from the convention which framed, but from the people who ratified it, *the intent to be arrived at is that of the people,* and it is not to be supposed that they have looked for any dark or abstruse meaning in the words employed, *but rather that they have accepted them in the sense most obvious to the common understanding,* and ratified the instrument in the belief that that was the sense designed to be conveyed.” (Cooley’s Const Lim 81).’”

Traverse City School District v Attorney General, 384 Mich 390, 405; 185 NW2d 9, 14 (1971)

When construing a constitutional provision, the Address to the People may be examined, since it was adopted by the Constitutional Convention as an explanation of the proposed Constitution and was widely disseminated prior to the vote of the people on the Constitution. *Regents of the University of Michigan v Michigan*, 395 Mich 52; 235 NW2d 1 (1975). The Address to the People accompanying Const 1963, art 9, § 24 states:

“This is a new section which requires that accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions be a contractual obligation which cannot be diminished or impaired by the action of its officials or governing body. It provides further protection for those covered by such pension and retirement plans by requiring that benefits arising on account of service rendered in each year be funded during that year. Such funding shall not be used for financing unfunded accrued liabilities.

“The section is an attempt to rectify, in part, policies which have permitted sizeable deficiencies to pile up in retirement systems in this state. Under this section, accruing liability in each fiscal year must be funded during that year, thus keeping any of these systems from getting farther behind than they are now.”

2 Official Record, Constitutional Convention 1961, p 3402

Again, there is no language which indicates that the state is ultimately liable for funding, or paying the benefits of, local retirement programs.

We may, lastly, consider the convention debates. However:

“[t]he debates must be placed in perspective. They are individual expressions of concepts as the speakers perceive them (or make an effort to explain them). Although they are sometimes illuminating, affording a sense of direction, they are not decisive as to the intent of the general convention (or of the people) in adopting the measures.” *Regents, supra*, 395 Mich, at 51-52; 235 NW2d, at 4.

At no point in the debates concerning what is now Const 1963, art 9, § 24 is any mention made of the state being the ultimate guarantor for the funding and benefits of local retirement plans. The comments that do appear are, in fact, to the contrary. For example:

“MR. SCHACKLETON: Mr. Chairman, a question to one of the committee, if I may. If a new fund were created by a present political

subdivision, or should in the future a new political subdivision be created and want to set up a pension fund, would they have to that first year put in funds sufficient to take care of past service? If not, how would past service funds be accumulated?

“CHAIRMAN MARTIN: Mr. Van Dusen.

“MR. VAN DUSEN: The answer, Mr. Chairman, to Mr. Shackleton’s first question is no, they would not have to immediately fund past service benefits. They would have to put in enough to currently fund current service benefits. . . . The only constitutional requirement would be the current funding of current service benefits.

“MR. SHACKLETON: If they did not properly take care of the past service then, where would your contractual obligation come out?

“MR. VAN DUSEN: *An employee who continued in the service of the public employer in reliance upon the benefits which the plan says he would receive would have the contractual right to receive those benefits, and would have the entire assets of the employer at his disposal from which to realize those benefits.*” (emphasis added)

1 Official Record, Constitutional Convention 1961, p 774

The Constitution may not be “commonly understood” to impose a substantial obligation upon the state without direct language to that effect. Nowhere in Const 1963, art 9, § 24 and the accompanying Address to the People is the state specifically, or by necessary implication, charged with being the ultimate guarantor of local government retirement program funding and benefits. It is, therefore, my opinion that the state is not ultimately liable for funding or paying the benefits of local government retirement programs.

FRANK J. KELLEY,
Attorney General.

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DRAINS AND DRAINAGE: Authority of county drain commissioners to remove obstructions.

A county drain commissioner may remove naturally growing or planted obstructions that impair the operation of a drain.

If an object located on private property extends into a right-of-way obtained for drainage purposes, the drain commissioner may remove the obstruction.

A county drain commissioner may not go beyond the boundaries of a drainage right-of-way to remove trees or shrubbery located upon the unencumbered portion of a feeholder’s land although the commissioner may enter adjacent property to make a survey in connection with drainage work that is authorized.

If trees or shrubs on adjacent property are damaged in the course of removing an obstruction to a drainage right-of-way, costs incurred in effecting necessary and reasonable restoration may not be imposed upon the owner of the adjacent property; such expenditures are to be paid from the fund specified in 1956 PA 40, § 196.