

reasonable." *Baker v State Land Office Board*, 294 Mich 602, 603; 293 NW 963 (1940); *City of Lansing v Township of Lansing*, 356 Mich 641; 97 NW2d 804 (1959); See also *United States Department of Agriculture v Moreno*, 413 US 533; 93 S Ct 2821; 37 L Ed 2d 787 (1973); OAG 1973-1974, No. 4815, p 177 (September 6, 1974).

The rational basis for surcharging non-resident patients can be found in 1945 PA 47, *supra*, §§ 4 and 7. These sections authorize cities, townships and villages composing the hospital authorities to levy taxes on their property to fund the construction and operation of the Hospital Authority.

Non-resident patients are not subject to these taxes; Thus, the surcharge requires non-residents to pay an amount which more closely approximates the true cost of services. To provide service at the same rate to both residents and non-residents would constitute a subsidy for non-residents at the expense of the residents.

Cases concerning non-resident student tuition at colleges and universities have not prohibited classifying students as residents and non-residents and requiring non-residents to pay higher tuition and fees than residents. *Vlandis v Kline*, 412 US 441; 93 S Ct 2230; 37 L Ed 2d 63 (1973).¹ What was attacked in *Vlandis v Kline, supra*, was the creation of permanent and irrebuttable presumptions of non-residence when the presumption is not necessarily universally true.

It is therefore my opinion that the Peoples Community Hospital Authority may impose a surcharge on hospital bills of non-residents.

FRANK J. KELLEY,
Attorney General.

761007.1

CONSTITUTION OF MICHIGAN: Art 8, § 2.

SCHOOL FUNDS: Charge for driver education course.

A driver education course is an essential part of the program provided by public elementary and secondary schools and therefore a public school district may not charge a fee for students enrolled in the driver education course.

Opinion No. 5118

October 7, 1976.

Honorable Bill S. Huffman
State Senator
The Capitol
Lansing, Michigan 48901

You have requested my opinion on the constitutionality of Senate Bill No. 1121 which would amend 1949 PA 300, § 811; MCLA 275.811; MSA

¹ "The appellees do not challenge, nor did the District Court invalidate, the option of the State to classify students as resident and nonresident students, thereby obligating nonresident students to pay higher tuition and fees than do bonifide residents. The State's rights to make such a classification is unquestioned here." *Vlandis v Kline, supra*, p 446.

9.2511, and allow a local public school district to charge a fee to enrolled driver education students. This fee would be based upon the difference between the amount of money appropriated by the legislature and the actual costs incurred in operating a driver education course by the local public school districts.

Const 1963, art 8, § 2 commands the legislature to "maintain and support a system of free public elementary and secondary schools. . . ." In *Bond v Ann Arbor School District*, 383 Mich 693, 700, 702; 178 NW2d 484, 487, 488 (1970), the Michigan Supreme Court construed the foregoing constitutional clause to mean that free schools means "without cost or charge" and extends to any school activity or function constituting "an essential part of a system of free public elementary and secondary schools." The Court held that free textbooks must be supplied to students. Thus, we must decide whether a driver education course is essential to a system of free public elementary and secondary schools.

An examination of 1949 PA 300, § 811, *supra*, reveals that portions of the fees charged for operator's and chauffeur's licenses are deposited in a driver education fund. This fund is used by the department of education for administration of a driver education program, and for distribution to local school districts to be used for driver education programs. The driver education courses are required to be made available to children enrolled in the high school grades of public, parochial, and private schools as well as out-of-school youth.

Driver education courses include classroom instruction plus behind the wheel instruction and observation in an automobile, and are required to be under the supervision of a qualified teacher or licensed instructor. The department of education is authorized to promulgate rules regarding instructional standards and teacher qualifications to further implement the legislation. 1949 PA 300, § 811, *supra*.

1949 PA 300, § 811(f), *supra*, provides in pertinent part:

" . . . [A]n operator's license shall not be issued to a person under 18 years of age unless that person *successfully passes* a driver education course and examination given by the public schools, nonpublic schools, or licensed driver training schools offering a course approved by the department of education as equivalent thereto. . . ." (emphasis added)

Thus, a person under 18 years of age may not obtain an operator's license unless that person successfully completes a driver education course at a public school, nonpublic school, or licensed driver training school.

I have previously ruled in OAG, 1961-1962, No 3656, p 407, 408 (May 25, 1962), that:

"A careful reading of section 811 discloses the unmistakable legislative intention that every high school district include driver education in its curriculum, for section 811 requires that 'such courses shall be conducted by the local public school district,' and 'a driver education course shall be made available for any person under 18 years of age.' . . ."

The legislature has mandated every public school district having a high

school to include a driver education course in its curriculum. Further, a person under 18 years of age may not obtain an operator's license unless he or she successfully passes a driver education course. Driver education courses must be offered by public school districts and the persons enrolled in such courses must be evaluated in terms of passing or failing as a condition precedent to obtaining an operator's license prior to attaining age 18.

Therefore, it follows that driver education courses are, under Michigan law, an essential part of a system of free public schools. Accordingly, it is my opinion that if Senate Bill No. 1121, allowing public school districts to charge a fee to driver education students, were enacted into law, such legislation would violate Const 1963, art 8, § 2.

FRANK J. KELLEY,
Attorney General.

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RECORDS AND RECORDATION: Public access to list of registered voters.

WORDS AND PHRASES: "Public records".

The voter list in the possession of a county clerk and a jury board are public records subject to public inspection.

The right to inspect public records does not mean that public officials are obligated to furnish copies of the record although they may do so if they wish.

Opinion No. 5107

October 11, 1976.

Honorable Connie Binsfeld
State House of Representatives
Capitol Building
Lansing, Michigan

You have requested an opinion on behalf of the jury board of Grand Traverse County, regarding the right of public access to a list of registered voters kept by the board. This list is used in the selection of a jury list.

A review of the law of the State leads to the conclusion that a definite policy of openness and disclosure of public records exists. This policy has existed since the time of *Burton v Tuite*, 78 Mich 363, 375-376; 44 NW 282, 285 (1889), in which the court stated:

" . . . It is plain . . . that the legislature intended to assert the right of all citizens, in the pursuit of a lawful business, to make such examinations of the public records in public offices as the necessity of their business might require, subject to such rules and restrictions as are reasonable and proper under the circumstances. . . ." (p 375)

The initial inquiry to be made concerns the question of what records are considered to be public records. As noted in 1 OAG, 1957-1958, No 2969, p 147 (April 2, 1957), records which are deemed to be public records