STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL

STANLEY D. STEINBORN
Chief Assistant Attorney General

FRANK J. KELLEY
ATTORNEY GENERAL

LANSING
48913

DEC 06 1977

Honorable Patrick H. McCollough
State Senate
The Capitol
Lansing, Michigan

Dear Senator McCollough:

House Bill No. 4368, which affects the single business tax, was enrolled on October 20, 1977 and presented to the Governor for signature on October 21, 1977. On November 3, 1977 the House requested that the bill be returned to it. This request was granted by the Governor, who returned the bill to the House (without a veto message), where the enrollment was vacated. The Senate did not participate in the request for the return of the bill.

You have therefore requested my opinion on the following questions:

"1. Can one house of the Michigan Legislature request the return of an enrolled bill which has been presented to the Governor without the concurrence of the other house of the legislature?

"2. Can the Governor return an enrolled bill to the house of origin without a veto message?

"3. If the answer to question No. 1 is 'no' then what is the effect of the action in question No. 1 being taken on the status of the enrolled bill pursuant to Art. 4, § 33 of the Michigan Constitution?

"4. Has House Bill 4368 become law without the Governor's signature by virtue of the fact that the Governor has not vetoed it and the statutory period for doing so has run,

> notwithstanding the fact, and/or because of the fact, that the Governor returned the bill to the Legislature without authority under the rules?"

Your questions will be addressed seriatim; however, before addressing them, it will be helpful to discuss the general principles involved.

Const 1963, art 4, § 33 provides:

> "Every bill passed by the legislature shall be presented to the governor before it becomes law, and the governor shall have 14 days measured in hours and minutes from the time of presentation in which to consider it. If he approves, he shall within that time sign and file it with the secretary of state and it shall become law. If he does not approve, and the legislature has within that time finally adjourned the session at which the bill was passed, it shall not become law. If he disapproves, and the legislature continues the session at which the bill was passed, he shall return it within such 14-day period with his objections, to the house in which it originated. That house shall enter such objections in full in its journal and reconsider the bill. If two-thirds of the members elected to and serving in that house passed the bill notwithstanding the objections of the governor, it shall be sent with the objections to the other house for reconsideration. The bill shall become law if passed by two-thirds of the members elected to and serving in that house. The vote of each house shall be entered in the journal with the votes and names of the members voting thereon. If any bill is not returned by the governor within such 14-day period, the legislature continuing in session, it shall become law as if he had signed it."

Prior to the adoption of the current Michigan constitution, the State Supreme Court considered a related question in Anderson v Atwood, 273 Mich 316; 262 NW 922 (1935). In Anderson, however, the court had under consideration the effectiveness of a bill which had been returned by the governor to the legislature upon a concurrent request of both houses for the return thereof.

Sen. Patrick H. McCollough

Although the court did not deal with the problem of recall of a bill by only one of the legislative bodies which you have presented, its language is instructive. Furthermore, since this case involved an interpretation of a section in the 1908 constitution which contained a similar provision, the constitutional delegates may be presumed to have been aware of the holding of the court. The court in Anderson, supra, stated, inter alia:

> "There is no finality in legislative enactments, enrolled and sent to the governor and, by courtesy, returned by him within ten days and before action thereon, at the request of the legislature by joint resolution of concurrent action. * * *
>
> "The enactment, as sent to the governor, lost its identity and force by the courtesy return thereof to the legislature and, without new legislation with reference thereto, did not become a valid enactment by operation of law.
>
> "House Bill No. 145 is not an act by operation of Constitution 1908, art. 5, § 36." Anderson v Wood, supra, p 319, 323.

Several facts are apparent from the Supreme Court statements in Anderson. First, the Supreme Court recognized that it is a courtesy for the governor to return a bill to the legislature upon its request once that bill has been enrolled. Second, while the court was concerned with a factual situation in which a concurrent resolution seeking return of the bill had been passed, it nevertheless was explicit in its statements that the request from the legislature must be a joint or concurrent action of both houses. That joint action is necessary and is strongly re-enforced by other authorities on statutes and constitutional law such as 1 Sutherland Statutory Construction (4 ed) § 16.07, Recall of Bills from the Governor:

> "A few cases have raised the questions as to the effect of the return of an act by the governor to the legislature at its request before the time has expired in which the governor may approve the bill. Where the request and return is made with the concurrence of the other house the return is valid and a new presentment to the executive is necessary before the bill may become law. One house alone, however, has no authority to act without the consent of the other and a return at the

> request of one house alone may cause a bill to become law because of the executive's failure either to approve or veto." (Footnotes omitted.)

Also, 82 CJS, Statutes, § 48b, Recall:

> "In the absence of constitutional restriction the legislature may by concurrent resolution recall a bill after presentation to the governor; but a bill may not be recalled on request of one house acting alone so as to render it open to reconsideration by the legislature."

Based on the foregoing text authorities and the Michigan Supreme Court's decision in Anderson, it is my opinion that if this matter were presented to the court, it would answer your questions as follows:

> "1. Can one house of the Michigan Legislature request the return of an enrolled bill which has been presented to the Governor without the concurrence of the other house of the legislature?"

The request by the legislature to return an enrolled bill once it has been presented to the Governor for signature must be a joint or concurrent action of both houses; a request for return of the bill by either house independently of the other is ineffective. Even if the governor returns a bill upon the request of a single house, that house is not able to vacate the action of enrollment.

> "2. Can the Governor return an enrolled bill to the house of origin without a veto message?"

In my opinion, the governor may, upon receipt of a proper request by both houses, return an enrolled bill to the house of origin without a veto message. This action must occur prior to the expiration of the 14-day period prescribed by section 33 of Const 1963, art 4.

> "3. If the answer to question No. 1 is 'no' then what is the effect of the action in question No. 1 being taken on the status of the enrolled bill pursuant to Art. 4, § 33 of the Michigan Constitution?"

The return of Enrolled House Bill No. 4368 by the Governor to the House of Representatives upon a unilateral request of that house without the concurrence of the Senate is of no effect and the bill becomes law without his signature.

"4. Has House Bill 4368 become law without the Governor's signature by virtue of the fact that the Governor has not vetoed it and the statutory period for doing so has run, notwithstanding the fact, and/or because of the fact, that the Governor returned the bill to the Legislature without authority under the rules?"

As noted in my answer to your third question, it is my conclusion that the fact that the veto period of Const 1963, art 4, § 33 has expired and the session of the legislature at which the bill was passed continues, the bill has, by operation of law, become a law, irrespective of the actions of the Governor and the House of Representatives upon that bill.

Very truly yours,

FRANK J. KELLEY
Attorney General

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL

STANLEY D. STEINBORN
Chief Assistant Attorney General

FRANK J. KELLEY
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P.O. Box 30212
LANSING
48909

May 20, 1993

Honorable Fred Dillingham
State Senator
The Capitol
Lansing, Michigan

Honorable John Kelly
State Senator
The Capitol
Lansing, Michigan

Dear Senators Dillingham and Kelly:

You have asked if the May 18, 1993, attempt by the Senate without the concurrence of the House of Representatives to recall Senate Bill No. 537 from the Governor to whom it was sent following its approval by both houses is valid.

As you know, in a December 6, 1977, Letter Opinion to Senator Patrick H. McCollough, copy attached, I concluded:

> The request by the legislature to return an enrolled bill once it has been presented to the Governor for signature must be a joint or concurrent action of both houses; a request for return of the bill by either house independently of the other is ineffective. Even if the governor returns a bill upon the request of a single house, that house is not able to vacate the action of enrollment.

A similar conclusion was reached in a May 5, 1992, Letter Opinion to Senators Arthur Miller, Jr. and John D. Cherry (copy attached).

It should also be noted that the Delaware Supreme Court has held:

> Any bill or joint resolution requires for passage the concurrence of a majority of all the members elected to each House. ... The delivery of the bill to the Governor is based upon the joint action of the two houses. If any subsequent legislative action can lawfully be taken to affect the status of the bill in the Governor's hands

> ... it must likewise be joint action. In our opinion one house has no such power of recall, even with the Governor's consent.

Opinion of the Justices, 174 A2d 818, 819 (1961).

Based upon the foregoing, it is my opinion that one house of the Legislature may not vacate the enrollment of a bill. Thus, Senate Bill No. 537 will, by operation of law, become a law if it is not vetoed by the Governor within the fourteen day period prescribed in Const 1963, art 4, § 33.

Very truly yours,

FRANK J. KELLEY
Attorney General

Att.

APPENDIX C

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL

STANLEY D. STEINBORN
Chief Assistant Attorney General

FRANK J. KELLEY
ATTORNEY GENERAL
P.O. Box 30212
LANSING
48909

May 5, 1992

Honorable Arthur Miller, Jr.
State Senator
The Capitol
Lansing, Michigan

Honorable John D. Cherry
State Senator
The Capitol
Lansing, Michigan

Dear Senators Miller and Cherry:

You have asked whether one house of the Michigan Legislature may request the return of an enrolled bill which has been presented to the Governor without the concurrence of the other house of the Legislature.

The identical question was addressed by my office in Letter Opinion of the Attorney General to Senator Patrick H. McCollough, dated December 6, 1977, copy enclosed, which concluded, at p 4:

> The request by the legislature to return an enrolled bill once it has been presented to the Governor for signature must be a joint or concurrent action of both houses; a request for return of the bill by either house independently of the other is ineffective. Even if the governor returns a bill upon the request of a single house, that house is not able to vacate the action of enrollment.

It remains my opinion that one house of the Michigan Legislature may not request the return of an enrolled bill which has been presented to the Governor without the concurrence of the other house of the Legislature.

Very truly yours,

FRANK J. KELLEY
Attorney General

Enc.

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DEC 06 1977

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State Senate
The Capitol
Lansing, Michigan

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Very truly yours,

FRANK J. KELLEY
Attorney General

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL

STANLEY D. STEINBORN
Chief Assistant Attorney General

FRANK J. KELLEY
ATTORNEY GENERAL

P.O. Box 30212
LANSING
48909

June 9, 1993

Mr. Phillip T. Frangos
Deputy Secretary of State
Michigan Department of State
Treasury Building
Lansing, Michigan 48918

Dear Mr. Frangos:

You have asked if the Department of State may assign a public act number to Senate Bill No. 537. As you know, the Senate, on May 18, 1993, voted to recall from the Governor and then to vacate the enrollment of Senate Bill No. 537. The House did not join in either action.

The Michigan Supreme Court has considered whether and how bills passed by both houses of the Legislature and presented to the Governor for his consideration can be recalled from the Governor. In Anderson v Atwood, 273 Mich 316; 262 NW 922 (1935), the Supreme Court termed the following statement of law "a well settled rule":

> "In the absence of a constitutional restriction the legislature may, by concurrent action of both houses, recall a bill which has been presented to the governor; but such recall will not have the effect of making the bill operative as a law, or affect the validity of the measure as finally passed and approved by the executive. The recall is effective if a bill is willingly returned upon request supported by the concurrent action of the two houses, although the request is not by means of a joint resolution; but after a bill has been passed in the legal and constitutional form by both houses of the legislature, and transmitted to the governor for his signature, neither branch of the legislature can, without the consent of the other, recall the bill for the purpose of further legislative action thereon." 59 C.J. p. 578. [Emphasis added.]

273 Mich at 319-320.

A similar conclusion was reached by the Delaware Supreme Court in Opinion of the Justices, 174 A2d 818 (1961). That case in turn quoted with approval from a New York case, People v Devlin, 33 NY 269, as follows:

> "This bill had passed both houses and been sent to the governor for his approval. The recall by the assembly was an infringement of parliamentary law. It was an attempt to do alone what if it could be done at all, required the joint action of both senate and assembly."

174 A2d at 819.

The Delaware Supreme Court held:

> One house of the legislature may not lawfully recall from the Executive a bill duly enacted by both houses.

174 A2d at 820.

The Florida Supreme Court in a 1947 decision reached a similar conclusion:

> The return of House Bill 122 by the Governor to the House of Representatives could not constitutionally confer on this Honorable Body the jurisdiction or power again to place the measure on its calendar and by a majority vote of the House reconsider the vote by which it was originally passed or to entertain a motion and by a majority vote to indefinitely postpone the bill.

State ex rel Schwartz v Bledsoe, 31 So2d 457, 460 (1947).

The Florida Supreme Court went on to hold, quoting from an earlier decision, State ex rel Florida Portland Cement Co v Hale 176 So 577, 581 (1937):

> "We hold that neither the House of Representatives nor the Senate of the Legislature of Florida could by its independent resolution recall from the hands of the Governor a bill which had been duly passed by the Legislature, had been authenticated and transmitted to the Governor for his consideration, and that the action of the Governor in transmitting the bill to the House of Representatives in the instant case was a matter of

> courtesy and had no effect upon the validity of the act which had been duly and constitutionally passed and transmitted to him for his consideration."

31 So2d at 461.

It should also be noted that while the May 18, 1993, Senate Journal shows that the motion "requesting the return of" Senate Bill No. 537 simply "prevailed", the motion "that the enrollment be vacated" was supported by nineteen Senators. 1993 Journal of the Senate, 1193, 1198 (No. 43, May 18, 1993). Nineteen Senators is, of course, one less than Const 1963, art 4, § 26, requires to pass a bill. That section provides, in pertinent part:

> No bill shall become a law without the concurrence of a majority of the members elected to and serving in each house.

However, since the case law set forth above is clear, there is no need to resolve whether "a majority [vote] of the members elected to and serving" in the Senate was necessary.

Based on the foregoing, it is clear that Senate Bill No. 537 is now law and it should be assigned a public act number.

Very truly yours,

Stanley D. Steinborn
Chief Assistant Attorney General