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May 20, 1993

Honorable Fred Dillingham  
State Senator  
The Capitol  
Lansing, MichiganHonorable 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

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... 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. Kelly*  
FRANK J. KELLY  
Attorney General

Att.

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