

section 11(b) notifies the civil service commission of a vacancy in the service which he desires to fill and requests the certification of eligibles, the civil service commission is under a duty to forthwith certify from the eligible list the name of the person who received the highest average at preceding examinations held under the provisions of this act within a period of two years next preceding the time of such appointment. If no eligible list exists, then the civil service commission must issue notice of an examination to be given for the vacant position in accordance with section 12(a) so that an eligible list may be established and certified to the appointing officer.⁴

Since Act 78 does not specify how long the civil service commission has after receiving the notice and request from the appointing officer in which to establish a list, if none exists, it is my opinion that the civil service commission has a reasonable time after receiving the notice and request from the appointing officer in which to establish the eligible list. In determining what is a reasonable time, consideration must be given to the fact that section 12(a) requires that notice of an examination be given two weeks preceding the examination, and also that a temporary appointment made in accordance with section 11(c) cannot continue for a longer period than 3 months.

FRANK J. KELLEY,
Attorney General.

630617.3

MICHIGAN HIGHER EDUCATION AUTHORITY: Power to charge fees.

The Michigan Higher Education Authority is without power to impose fees upon students securing loans from financial institutions, which are guaranteed by the Authority under the provisions of Act 77, P.A. 1960.

No. 4132

June 17, 1963.

Hon. Lynn M. Bartlett, Chairman
Michigan Higher Education Authority
State Capitol
Lansing, Michigan

You have requested my opinion on the following question:

Does the Michigan Higher Education Assistance Authority have the power to charge a fee to college students receiving guaranteed loans made possible by Act 77, P.A. 1960?

The legislature, by means of the provisions of Act 77, P.A. 1960, M.S.A. 1961 Cum. Supp. § 15.2097(1), has created the nonprofit authority to be known as the Michigan Higher Education Assistance Authority.

Section 7 of the act provides as follows:

"The authority may:

(a) Guarantee not more than 80% of any loan of money, upon such terms and conditions as the authority shall prescribe, to persons

⁴ See also O.A.G. No. 2948, 1957-58, Vol. I, p. 124.

who are residents of this state and who are attending or those having been accepted to attend private or publicly supported institutions of higher learning in this state, or elsewhere, to assist them in meeting their expenses of higher education incurred in any one academic year.

(b) Take, hold and administer, on behalf of the authority real, personal or mixed property and moneys, or any interest therein, and the income therefrom, either absolutely or in trust, for any purpose of the authority. The authority may acquire property for such purpose by purchase or lease and by the acceptance of gifts, grants, bequests, devises or moneys or loans. No obligation of the authority shall be a debt of the state, and the authority shall have no power to make its debts payable except from moneys received directly from private sources.

(c) Enter into contracts with financial institutions, upon such terms as may be agreed upon between the authority and the institution, to provide for the administration by the institutions of any loan, or guarantee of a loan, made by the authority, including applications therefor and repayment thereof."

A plain reading of the act is persuasive of the conclusion that the legislature has not expressly empowered the Michigan Higher Education Assistance Authority to charge a fee to resident students receiving guaranteed loans authorized by Act 77, P.A. 1960, supra.

In the construction of statutes courts will determine the occasion and necessity for the enactment of the statute and will give effect to its purpose if possible. *Webster v. Rotary Electric Steel Company*, 321 Mich. 526 (1948).

The occasion and necessity for the passage of Act 77, P.A. 1960, supra, is patent from a reading of its provisions. The legislature was seeking to help resident students to pay for their education in public or private institutions of higher learning through loans guaranteed by the authority. At the same time the legislature specified that the responsibility of the Michigan Higher Education Assistance Authority to pay any loans guaranteed by it was to be with moneys obtained from private sources.

Resident students are best assisted in financing their college education through loans guaranteed by the authority, payable to lending institutions with interest without the payment of fees to the authority. The requirement of such a fee as a condition precedent to securing a loan by a student might well serve to prevent the student from availing himself of the beneficial intendments of Act 77, P.A. 1960, supra.

The statute imposes no requirement upon a student to pay a fee to the authority. To imply such a power by forced construction would be contrary to the spirit of the act.

Therefore, it is my opinion that the Michigan Higher Education Assistance Authority is without power to impose a fee upon resident students as a condition precedent to a guarantee of loans under the provisions of Act 77, P.A. 1960, supra.

FRANK J. KELLEY,
Attorney General.