

Therefore, it is my opinion that when a school district under tenure votes to consolidate with a school district not under tenure, the consolidated school district is not subject to the provisions of the Tenure of Teachers' Act. It becomes subject to the Tenure of Teachers' Act if the school electors of the consolidated school district vote to come under the provisions of the act.

FRANK J. KELLEY,
Attorney General.

631206.1

REGIONAL PLANNING COMMISSION: School district may join in creation of.

SCHOOL DISTRICTS: School district operating funds for support of regional planning commissions.

School district, upon resolution of its board of education, may join in the creation of a regional planning commission under Act 281, P.A. 1945, as amended.

Board of education may use operating funds of school district to support regional planning commission created by it under Act 281, P.A. 1945.

No. 4196

December 6, 1963.

Hon. Paul M. Chandler
State Representative
The Capitol
Lansing, Michigan

You have requested my opinion on the following questions:

1. May the Board of Education of the Plymouth Community Schools participate in the organization of a regional planning commission in the Plymouth area in accordance with Act 281, P.A. 1945, as amended by Act 196, P.A. 1952?
 2. May the Board of Education use operating funds to pay a pro rata share of the cost of operating such a regional planning commission?
1. Act 281, P.A. 1945, as amended by Act 194, P.A. 1952, being C.L. 1948 and C.L.S. 1961 § 125.11 et seq.; M.S.A. 1958 Rev. Vol. § 5.3008(1) et seq., provides for the creation of a regional planning commission by action of two or more local governmental units.

Section 1 of the Act defines the term "local governmental units" to include:

"* * * cities, villages, other incorporated political subdivisions, counties, *school districts*, special authorities, townships, or any legally constituted governing body responsible for the exercise of governmental functions within a political subdivision of the state." (Emphasis supplied)

Plymouth Community Schools is a third class school district organized under the provisions of Chapter 4, Part 1 of the School Code of 1955, being Sections 101-122 of Act 269, P.A. 1955, as last amended by Act 271, P.A. 1959, C.L.S. 1961 § 340.101-122; M.S.A. 1961 Cum. Supp. § 15.3101-3122.

A school district is a legal division of territory of the state created by the state for educational purposes, possessed of such powers as are considered necessary for the school district to function as a state agency. *Board of Education of the City of Detroit v. Superintendent of Public Instruction*, 319 Mich. 436 (1947).

School districts have such powers only as the legislature has conferred upon them in statutes, expressly or by necessary implication. *Jacox v. Board of Education of Van Buren Consolidated School District*, 293 Mich. 126 (1940).

A school district speaks only through the minutes or the resolution of its board of education. *Travener v. Elk Rapids Rural Agricultural School District*, 341 Mich. 244 (1954).

For the purposes of Act 281, P.A. 1945, supra, the legislature has expressly designated a school district to be a "local governmental unit." Thus, it has clearly empowered the school district to join with one or more other local governmental units to form a regional planning commission.

Under Section 2 of the Act such regional planning commissions are created by resolution by the legislative body of any two or more governmental units as defined by the Act.

Since a school district speaks through the resolutions of its board of education, approval to form such a regional planning commission may be given by lawful resolution of the Board of Education of Plymouth Community Schools, the governing body of the school district. While such board of education cannot be considered a legislative body, the Attorney General has ruled in O.A.G. 1945-46, No. 0-4298, p. 620, that the Board of Commissioners as the governing body of the Huron-Clinton Metropolitan Authority was empowered by the act to participate in a regional planning commission through lawful resolution even though it was not a legislative body.

Therefore, in answer to your first question, a school district by resolution of its board of education, is authorized to participate with one or more other local governmental units in the formation of a regional planning commission under Act 281, P.A. 1945, as amended.

2. Section 12 of Act 281, P.A. 1945, as amended by Act 194, P.A. 1952, authorizes the governing body of a school district to use operating funds of the district to finance its pro rata share of the expense of the regional planning commission. This portion of the statute contemplates that each of the governmental units sponsoring the regional planning commission bear an equal share of the cost of such commission, although a local governmental unit under the act may contribute services as part of its financial support of the commission.

Operating funds of a school district are raised by the board of education through taxes levied upon all taxable property within the school district in accordance with Sections 563 and 564 of the School Code of 1955, being C.L.S. 1961 § 340.563-564; M.S.A. 1959 Rev. Vol. and 1961 Cum. Supp. § 15.3563-3564.

Section 34 of Act 312, P.A. 1957, being M.S.A. 1959 Rev. Vol. § 15.1919

(84), bars the use of state school aid fund moneys paid to school districts for the support of regional planning commissions by school districts.

Therefore, it is the opinion of the Attorney General that the board of education of a school district may use operating funds to support a regional planning commission created by it in accordance with Section 12 of Act 281, P.A. 1945, *supra*.

FRANK J. KELLEY,
Attorney General.

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**CONSTITUTIONAL LAW:
ELECTIONS—BALLOT DESIGNATION:**

An attempt by the legislature to provide by statute that "appointed" judges seeking election after January 1, 1964 shall have a ballot designation as "incumbent" or have the designation of their office would be unconstitutional and void because in violation of Article VI, Section 24, Constitution of 1963, which grants the ballot designation of their office only to elected incumbent justices or judges who are candidates for nomination or election to the same office.

No. 4244

December 10, 1963.

Honorable William D. Ford
State Senator
Lansing, Michigan

You seek the opinion of the Attorney General by your letter of inquiry in which you refer to Article VI, Section 24 of the Constitution of 1963, and ask:

"Can the Legislature provide by statute that 'appointed' judges seeking re-election [election] after January 1, 1964, shall have a ballot designation as 'incumbent?'"

Article VI, Section 24, Constitution of 1963, is as follows:

"There shall be printed upon the ballot under the name of each elected incumbent justice or judge who is a candidate for nomination or election to the same office the designation of that office."

This section will become effective January 1, 1964. The following explanation of Section 24 appears in the Address to the People adopted by the Constitutional Convention and published co-ordinately with the proposed Constitution at and prior to the time of its submission to the people:

"This is a revision of the last paragraph of Sec. 23, Article VII, of the present constitution. The word 'elected' has been inserted in front of 'incumbent'. Hence it provides that only judges who have been elected are eligible for the incumbency designation."

In order to make certain that the Address to the People as it pertains to Article VI, Section 24, accurately reflects the intention of the delegates to the Constitutional Convention, the official record of the Constitutional