

of the intermediate board of education, since the statute limits the qualification of the membership of the intermediate board of education.

A public office is vacant in the eyes of the law whenever it is unoccupied by a legally qualified incumbent who has a lawful right to continue therein until the happening of some future event. *Baxter v. Latimer*, 116 Mich. 356 (1898).

Therefore, it is the opinion of the Attorney General that under Sec. 294a of the School Code of 1955, as added by Act 190, P.A. 1962, not more than two members of an intermediate board of education shall be from the same local school district unless there are fewer districts than there are positions to be filled, and should an annexation to a local school district take place so that there would be three members of the intermediate board of education to be from the same school district, the third member is not lawfully qualified to occupy the office of member of the intermediate board of education by virtue of the fact that he is from the same local school district and his office is vacant. The vacancy shall be filled by the remaining members of the board in accordance with Sec. 294a of the School Code of 1955, as added by Act 190, P.A. 1962.

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640218.1

CONSTITUTIONAL LAW:

Duties of appointive auditor general.

AUDITOR GENERAL:

Powers and duties of elected auditor general continued.

LEGISLATURE:

Transfer of powers of elected auditor general.

Michigan Constitution of 1963 bars the legislature from conferring additional duties upon the appointive auditor general provided for by the people in Sec. 53, Art. IV, thereof. The appointive auditor general shall not exercise the duties imposed upon him by the Constitution until January 1, 1965. The powers and duties of the elected auditor general, other than post audit and performance post audit of state agencies and state institutions, may be transferred by the legislature to other state officers or agencies as the legislature shall determine under the executive reorganization authorized in Sections 2 and 3 of Article V of the Michigan Constitution of 1963, or by the enactment of appropriate legislation, provided that such transfer shall not become effective sooner than January 1, 1965.

No. 4284

February 18, 1964.

Honorable Allison Green, Speaker
House of Representatives
The Capitol
Lansing, Michigan

You have requested my opinion as to what duties of the present elected Auditor General can be transferred to the Auditor General to be appointed

by the legislature under Section 53 of Article IV of the Constitution of 1963. You further wish to know the duties which cannot be transferred to the appointive Auditor General and the reason why such a transfer cannot be made.

The office of appointive Auditor General is created by Section 53 of Article IV of the Constitution of 1963. The duties and powers of the office of appointive Auditor General are spelled out in Article IV, Section 53 of the Constitution as follows:

"The legislature by a majority vote of the members elected to and serving in each house, shall appoint an auditor general, who shall be a certified public accountant licensed to practice in this state, to serve for a term of eight years. He shall be ineligible for appointment or election to any other public office in this state from which compensation is derived while serving as auditor general and for two years following the termination of his service. He may be removed for cause at any time by a two-thirds vote of the members elected to and serving in each house. The auditor general shall conduct post audits of financial transactions and accounts of the state and of all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state established by this constitution or by law, and performance post audits thereof.

"The auditor general upon direction by the legislature may employ independent accounting firms or legal counsel and may make investigations pertinent to the conduct of audits. He shall report annually to the legislature and to the governor and at such other times as he deems necessary or as required by the legislature. *He shall be assigned no duties other than those specified in this section.*

"Nothing in this section shall be construed in any way to infringe the responsibility and constitutional authority of the governing boards of the institutions of higher education to be solely responsible for the control and direction of all expenditures from the institutions' funds.

"The auditor general, his deputy and one other member of his staff shall be exempt from classified civil service. All other members of his staff shall have classified civil service status."

(Emphasis supplied.)

The wording of Section 53, Article IV of the Michigan Constitution of 1963 is plain and free from ambiguity and requires no judicial construction to determine its meaning. *People v. Board of State Canvassers*, 323 Mich. 523; *Stoliker v. Board of State Canvassers*, 359 Mich. 65.

It is clear that the people have enumerated the duties of the appointive auditor general and have barred the legislature from assigning additional duties to the appointive auditor general. The people in ratifying the Michigan Constitution of 1963 have imposed upon the appointive auditor general the duty to conduct post audits of financial transactions and accounts of the state and of all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state as established by the Constitution or by law and perform post audits thereof.

This was also the intent of the framers of the Michigan Constitution of 1963 as evidenced by an examination of the Debates of the delegates to the Constitutional Convention. Such examination reveals that Section 53, Article IV of the Michigan Constitution of 1963 originated as Committee Proposal No. 78 at the Constitutional Convention and was introduced by the Joint Committee on Legislative Powers and Executive Branch.¹ Messrs. Hoxie and Martin, Chairmen of the Joint Committee, submitted a report to the Convention containing the following reasons for supporting Committee Proposal No. 78. Their report, in part, stated as follows:²

"The duties of the legislative auditor general are to conduct comprehensive fiscal postaudits and performance postaudits and to make investigations pertinent to the conduct of such audits. A performance postaudit is an examination of the effectiveness of administration, its efficiency and its adequacy in terms of the program of the departments or agencies as previously approved by the legislature. The prohibition against assigning other substantive duties to the officer focuses attention on the primary duties and prevents his being placed in the anomalous position of having to audit his own administrative activities. Nonauditing duties of the present office (such as county auditing, examination and approval of plats, and duties relative to the sale of lands delinquent for taxes) should be assigned by law to other existing executive agencies.

"While the investigatory powers of the legislative auditor general are necessarily broad, they are strictly limited and confined to the post-audit area. All preaudit functions remain exclusively in the executive branch where they properly belong. Thus the legislative auditor general has absolutely no power to intervene in or in any way interfere with the exercise by the executive branch of its judgment in carrying out approved programs or its day to day function and discretion in the execution of appropriations."

Chairman Martin further stated in the debates on the proposal the following:³

". . . The proposal comprehends that the auditor general would not—and I want to emphasize this—would not get into the business of preauditing. Preauditing is the kind of thing which the department of administration through its accounting division does now. It is the kind of work which the internal accounting department and the controller in a business does during the year. They check the payments that are going out to make sure that they are proper and that they are not being used for improper purposes or purposes which the legislature has not provided. Now when you finish the year, then the post audit process occurs, and this is the function of the auditor general—and

¹ Official Record, Constitutional Convention of 1961, One Hundredth Day, March 15, 1962, p. 1672.

² Official Record, Constitutional Convention of 1961, One Hundredth Day, March 15, 1962, pp. 1672, 1673.

³ Official Record, Constitutional Convention of 1961, One Hundredth Day, March 15, 1962, p. 1673.

it is the function of the auditor general at the present time—to then review the operations to determine whether they have in fact been conducted according to law and in the manner in which the legislature directed. The business analogy is similar. You have your internal accounting and afterward you have a complete audit by an independent firm.

“In the present situation in state government, you have the preaudit being conducted by the executive branch and then you have the executive branch again doing a post audit. Now this change puts the thing in a much more logical frame. It permits internal accounting controls to operate through the controller of the department of administration and his accounting division. Then it permits a post audit by an independent body, namely, the legislative auditor.”

The intent of the Constitutional Convention is further brought out by a series of questions asked of Mr. Martin by Mr. Downs and Mr. Austin.⁴

“MR. DOWNS: Could I ask then through the Chair, on lines 16 and 17, what does the term ‘institutions of the state, whether established by this constitution or by law’ include?”

“MR. MARTIN: This means everything, Mr. Downs. When we first drafted the proposal, it was obviously defective because it did not include the right to audit all of the various parts of state government. Among other things the word ‘branches’ was added so that it was clear that the legislative auditor could audit the 2 other branches. The word ‘authorities’ was added to make clear that he could audit such things as the Mackinac bridge authority. The word ‘institutions’ was added to make sure that this covered all kinds of institutions. And the phrase ‘whether established by this constitution or by law’ was added to make sure that constitutionally established bodies were not excluded.

“MR. DOWNS: Thank you. And Mr. Chairman, may I ask: what does the term ‘performance post audits’ in lines 17 and 18 mean?”

“MR. MARTIN: If you will refer to our statement of supporting reasons, Mr. Downs, the term ‘performance post audit’ is defined there as ‘an examination of the effectiveness of administration, its efficiency and its adequacy in terms of the program of the departments or agencies as previously approved by the legislature.’ In other words, the department or agency goes before the legislature and presents its program and says, ‘This is what we are proposing to do.’ The auditor may make a fiscal audit, as is provided, which is to determine whether the money which is expended by the agency—appropriated to and then expended by the agency—is spent properly and for proper subjects within the scope of the bill. And, secondly, he may take a look to determine whether the agency has carried out its commitments to the legislature which were made when the agency appeared before the legislature to ask for its budget or its appropriation in the last preceding year.

“* * *

⁴ Official Record, Constitutional Convention of 1961, One Hundredth Day, March 15, 1962, pp. 1681, 1682.

"MR. AUSTIN: Mr. Chairman—thank you, Mr. Downs—I would like to ask one question of Mr. Martin, too, in regard to the elimination of the auditor general, whom, I presume, will be replaced by the legislative auditor. We have indicated on page 1, line 12, of the substitute proposal that

"The legislative auditor general shall conduct comprehensive fiscal post audits of all transactions and accounts kept by or for all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state * * *.

"Now am I to assume this would exclude local units of government, Mr. Martin?

"MR. MARTIN: Yes, Mr. Austin, that is correct. It is not intended that the legislative auditor general should do anything more than handle state agencies, departments and institutions. These other units would, of course, continue to be subject to such audit as the legislature required. At the present time the counties are audited. The townships are not audited, generally, unless there are special problems. The school districts are not audited except that the legislature requires that they themselves have an independent audit made. So there are different provisions and it is to be presumed that the legislature would make such provision for them. They would not be audited by the legislative auditor general.

"* * *

"MR. AUSTIN: Now, if you are eliminating the present auditor general and if the legislative auditor general is to have no other duties than those specifically assigned to him in this proposal—which would, of course, exclude local units of government—what do you envision will be the auditing agency for these local units of government?

"MR. MARTIN: Well, we would leave that entirely to the legislature, Mr. Austin, to place that where it appeared to be the most desirable. As you know, we do propose that there be some reconsolidation of some of the departments. If that is approved it would be placed by the legislature in one of those departments, presumably—

"MR. AUSTIN: Mr. Chairman—

"MR. MARTIN: —or might be made a separate department depending upon what the legislature saw fit to do.

"MR. AUSTIN: Mr. Chairman, Mr. Martin, then what you do envision is another auditing agency in addition to the legislative auditor within the structure of the state government somewhere?

"MR. MARTIN: We envision another auditing agency, Mr. Austin, but we don't envision another auditing agency for state government and for state institutions. At the present time the work is completely divided and completely divisible in the office of the auditor general. He has 2 staffs which do not cross over. One of them works on state audits and the other works on county audits."

Thus, it was the clear intent of the people and the framers of the Michigan Constitution of 1963, duly meeting in Constitutional Convention, that

the appointive auditor general provided for in Section 53, Article IV of the Michigan Constitution of 1963, have duties enumerated in the Constitution and no others.

To the extent that the post audit of state institutions and agencies and performance post audit thereof are presently vested in the auditor general by law, the question of the date when the appointive auditor general shall assume these duties must be considered and determined. The present elected auditor general was elected by the people in November of 1962 for a term to expire December 31, 1964 under the provisions of the Michigan Constitution of 1908.

Since the people have provided in Section 3 of the Schedule and Temporary Provisions of the Constitution of 1963 that the present elected auditor general shall continue in office until the expiration of his term, in the absence of language in the Michigan Constitution of 1963 transferring the post audit duties of the present elected auditor general as they relate to state agencies and institutions to the appointive auditor general, such duties must remain in the presently elected auditor general until the expiration of his term.

State v. City of Toledo, 50 N.E. 2d 338;

Northcutt v. Howard, 130 S.W. 2d 70.

Therefore it is the opinion of the Attorney General that the powers of the elected auditor general over post audits and performance post audit of state agencies and institutions may be terminated by the legislature effective January 1, 1965 and transferred to the appointive auditor general as of that date. The answer to your first question is a full answer to your second question. From what has already been stated, the Constitution prohibits the legislature from transferring any of the other powers and duties of the elected auditor general to the appointive auditor general.

The legislature is required to provide by law for the auditing of county accounts by competent state authority and other units of government as provided by law pursuant to the mandate of the people found in Section 21 of Article IX of the Michigan Constitution of 1963.

Such obligation may be discharged by appropriate legislation transferring the various applicable powers and duties of the elected auditor general to such other state agencies within the executive branch of the state government as determined by the legislature. The people have provided in Sections 2 and 3 of Article V, Michigan Constitution of 1963, for a consolidation of all executive and administrative offices, agencies and instrumentalities. The legislature may transfer all other powers and duties of the elected auditor general, excepting post audit and performance post audit of state agencies and institutions, as a part of the plan of departmental reorganization if the legislature so chooses.

Answering your second question, the transfer of the non-post audit and performance post audit of state agencies, institutions, powers and duties of the elected auditor general, can be transferred by the legislature under Sections 2 and 3 of Article V of the Michigan Constitution of 1963 or by the enactment of appropriate legislation vesting such powers and duties in administrative offices, agencies and instrumentalities of the executive branch

of state government as the legislature shall determine provided that such transfer take place not sooner than January 1, 1965.

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Attorney General.

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TAXATION: Property Tax Limitation — Separate tax limitations.
ELECTIONS: Elective franchise.

Adoption in a county of the 18-mill limitation as authorized by Article IX, Section 6, Constitution of 1963, requires only a majority vote of the electors qualified under Article II, Section 1 of the Constitution, such electors all being qualified voters in the county.

Increases beyond the basic 15-mill or the basic 18-mill limitation, applicable within a county as the case may be, where such increase is for a period of more than 5 years, require for adoption the approval of a majority of the electors residing in and who have property assessed for ad valorem taxes in any part of the district or territory to be affected by the result of such election or electors who are the lawful husbands or wives of such persons so entitled to vote thereon.

No. 4243

February 20, 1964.

Hon. James N. Folks, Chairman
General Taxation Committee
House of Representatives
State Capitol
Lansing, Michigan

You have requested answer to questions dealing with separate tax limitations authorized by Art. IX, § 6 of the Constitution of 1963, which section reads in part as follows:

“Except as otherwise provided in this constitution, the total amount of general ad valorem taxes imposed upon real and tangible personal property for all purposes in any one year shall not exceed 15 mills on each dollar of the assessed valuation of property as finally equalized. Under procedures provided by law, which shall guarantee the right of initiative, separate tax limitations for any county and for the townships and for school districts therein, the aggregate of which shall not exceed 18 mills on each dollar of such valuation, may be adopted and thereafter altered by the vote of a majority of the qualified electors of such county voting thereon, in lieu of the limitation hereinbefore established. These limitations may be increased to an aggregate of not to exceed 50 mills on each dollar of valuation, for a period of not to exceed 20 years at any one time, if approved by a majority of the electors, qualified under Section 6 of Article II of this constitution, voting on the question.”

Your first question reads:

“1. May proposals for increases in aggregate tax limitations up to 18 mills be made without any specification of the period during which