

In effect, the legislature enacts or rejects the initiative petition by resolution of each house of the legislature. See *Decher v. Secretary of State*, 209 Mich. 565 (1920).

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640313.1

CONSTITUTIONAL LAW: Investment of pension funds in corporate stock.

RETIREMENT SYSTEMS: Investment of retirement funds.

Funds accumulated to provide retirement or pension benefits for public officials and employees may be invested in the stock of any company, association or corporation as authorized by the legislature by statute.

No. 4218

March 13, 1964.

Hon. Robert E. Waldron
State Representative
The Capitol
Lansing, Michigan

Article IX, Sec. 19 of the Michigan Constitution of 1963, provides in pertinent part as follows:

"The state shall not subscribe to, nor be interested in the stock of any company, association or corporation, *except that funds accumulated to provide retirement or pension benefits for public officials and employees may be invested as provided by law; * * *.*" (Emphasis supplied)

You ask whether the language "as provided by law," found in Article IX, Sec. 19 of the Michigan Constitution of 1963, means statutes enacted by the state legislature.

You indicate in your letter that some retirement systems are provided for by the charters of municipal corporations. The charter of a city is the fundamental law of the city. *Mayor of City of Dearborn v. Dearborn Retirement Board of Trustees*, 315 Mich. 18 (1946).

Implicit in your inquiry is the question whether the charter of a municipal corporation is a "provision of law" as intended by the people in Article IX, Sec. 19 of the Michigan Constitution of 1963.

Thus, it may be concluded that the language "provided by law," found in Article IX, Sec. 19 of the Michigan Constitution of 1963 is not entirely clear in its meaning.

The object of construction of the Constitution is to ascertain and give effect to the intent of the people in ratifying the Constitution. *City of Jackson v. Commissioner of Revenue*, 316 Mich. 694 (1947).

Where the language in the Constitution is unclear, resort may be had to the debates of the framers. *Kearney v. Board of State Auditors*, 189 Mich. 666 (1915).

Article IX, Sec. 19 was presented to the Constitutional Convention as Committee Proposal No. 37 by the Committee on Finance and Taxation, and when the Convention considered it on first reading, Mr. Brake, Chairman of the Committee, submitted the following reason in support of the proposal:

"Sec. d. Section 13 of article X of the present constitution, which is revised by the committee proposal, has the desirable object of preventing state ownership of private business. However, it has some other results which the committee believes are unduly restrictive. The development, since the adoption of the present constitution, of substantial public employee retirement funds and university endowment funds, has made necessary reexamination of the type of investments available for such funds. The committee believes that if these funds are to earn the best return and are to be protected against inflation, the legislature should have the power to permit, under appropriate restrictions as to quality and amount, investment of these funds (but not other public funds) in such things as share accounts in savings and loan associations, and high grade corporate securities."

Constitutional Convention, 1961 Official Record, Vol. 1, page 767.

In the debate that ensued, the following comment was made by delegate Van Dusen:

"It was believed by the committee that it would be desirable to permit, under restrictions imposed by the legislature, the investment of these long term funds in securities, including the equity securities of corporations, if the legislature felt that was desirable."

Constitutional Convention, 1961 Official Record, Vol. 1, page 767.

An effort was made to amend the proposal to limit the nature of securities that might be acquired "as provided by law," but this amendment was subsequently withdrawn. Constitutional Convention, 1961 Official Record, Vol. 1, pages 769-770.

An examination of the debate of Proposal 37 on first, second and third reading indicates clearly the manifest intent of the framers of the Michigan Constitution of 1963 that "provided by law," appearing in Proposal 37 and subsequently enacted as Article IX, Sec. 19, means the adoption of statute by the Michigan legislature.

The Michigan Supreme Court has construed the language "provided by law," as used in a statute, to mean "provided by statute." *In re Campbell*, 138 Mich. 597 (1904).

The language "provided by law" appearing in a state constitution was defined as the manner fixed by the constitution for the enactment of statutes. *In re Opinion of the Justices*, (Mass. 1939) 21 N.E. 2d 551. See also *Lawson v. Kanawha County Court*, (W. Va. 1917) 92 S.E. 786.

The conclusion must follow that the people in approving the Michigan Constitution of 1963 intended to repose authority in the legislature to determine under what restrictions, if any, funds accumulated to provide retirement or pension benefits for public officials and employees may be invested in the stock of any company, association or corporation, and that

such legislative action be by statute in accordance with the provisions of the Michigan Constitution.

The legislature has made provision for the investment of funds accumulated to provide retirement or pension benefits for public officials and employees of the state in accordance with the provisions found in Act 240, P.A. 1943, as amended, being C.L. 1948 and C.L.S. 1961, § 38.1 et seq.; M.S.A. 1961 Rev. Vol. § 3.981(1) et seq. Under Section 8 of the act the state administrative board is empowered to invest the funds of the retirement system and the authority to make the investment is precisely stated therein. No power to invest in the stock of any company, association or corporation is conferred. Consequently, the state administrative board is without present authority to invest any funds of the state employees' retirement system in the stock of any company, association or corporation.

The public school employees' retirement board is authorized to make investments of retirement funds under its control pursuant to Sec. 8 of Chapter I of Act 136, P.A. 1945, as amended, being C.L.S. 1956 § 38.208; M.S.A. 1959 Rev. Vol. § 15.893(8). Under current statutory authority the board is without power to make any investments of retirement funds in the stock of any company, association or corporation.

The authority of the retirement commission, created by Sec. 3 of Chapter II of the Act, to invest funds of the retirement system authorized by Sec. 46 of Chapter II of Act 136, P.A. 1945, being C.L. 1948 § 38.346; M.S.A. 1959 Rev. Vol. § 15.893(86), is broader since the investment powers conferred upon such commission, with certain exceptions, are subject to all terms, conditions, limitations and restrictions imposed by the law of Michigan upon life insurance companies. A comparable investment power is reposed in the municipal employees' retirement board, pursuant to Sec. 61 of Act 135, P.A. 1945, being C.L. 1948 § 38.661; M.S.A. 1958 Rev. Vol. § 5.4061.

It should be observed that the investment power of insurance companies is regulated by provisions of Chapter 9 of Act 218, P.A. 1956, being C.L.S. 1956 § 500.900 et seq.; M.S.A. 1957 Rev. Vol. § 24.1900 et seq. In these portions of the insurance code is authority to make investments in certain types of stock under the limitations found therein.

The board of trustees of the legislative retirement system is empowered by Sec. 50 of Act 261, P.A. 1957, being C.L.S. 1961 § 38.1050; M.S.A. 1961 Rev. Vol. § 2.169(50) to make investments of retirement funds only in obligations of the United States and general obligations of states, cities and counties, subject to certain well-defined restrictions. No authority to invest funds in stock is reposed in the board of trustees under current statute.

The state administrative board is authorized to make investments in behalf of the judges' retirement system, pursuant to Sec. 24 of Act 198, P.A. 1951, as last amended by Act 141, P.A. 1952, M.S.A. 1962 Rev. Vol. § 27.125(24), and in behalf of the probate judges' retirement system, pursuant to Sec. 25 of Act 165, P.A. 1954, being C.L.S. 1956, § 38.925; M.S.A. 1962 Rev. Vol. § 27.3178(60.25). The authority of the state administrative board to invest retirement funds of such system does not include power to invest in any type of stock.

Review of the various state retirement systems has been made to assist you in formulating plans to implement Article IX, Sec. 19 of the Michigan Constitution of 1963.

Insofar as retirement systems are created by political subdivisions of this state, it is clear that investment of pension funds in stock of any company, association or corporation must be authorized by the legislature through enactment of appropriate statutes in accordance with the Constitution.

Every municipal charter is subject to the Constitution and the general laws of the State. *City of Hazel Park v. Municipal Finance Commission*, 317 Mich. 582 (1947).

Therefore, it is the opinion of the Attorney General that the investment of funds accumulated to provide retirement or pension benefits for public officials and employees in the stock of any company, association or corporation, pursuant to Article IX, Sec. 19 of the Michigan Constitution of 1963, must be authorized by the legislature through duly enacted statute.

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640313.2

MUNICIPAL FINANCE COMMISSION: Approval of for acquisition of buildings.

SCHOOL DISTRICT: Funds.

Borrowing by school district for acquisition and payment of prefabricated and portable buildings requires prior permission of Municipal Finance Commission where funds from future fiscal years are obligated.

No. 4252

March 13, 1964.

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Request has been received for opinion concerning the necessity of approval by the Municipal Finance Commission of prefabricated and portable buildings purchased under Act 23 of the Public Acts of 1963 adding Section 576b to Act 269, P.A. 1955 [M.S.A. Current Materials § 15.3576(2)], providing as follows:

"Sec. 576b. The board of any school district, including any school district governed by any special or local act, may acquire by purchase, lease, with or without option to purchase, or title retaining contract, classrooms, school buildings, or buildings for the storage of school buses which are of prefabricated construction and which are portable in that such structures or their principal components are capable of being disassembled and transported from one location or site for re-assembly and use at another location or site. Any such district may pay for the same out of any funds of the district which are or may become available for these purposes."