

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.

FRANK J. KELLEY,  
*Attorney General.*

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.

Mr. E. Boomie Mikrut, Director  
Municipal Finance Commission  
Box 448  
Lansing, Michigan 48902

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."

Chapter I, Section 2 of the Municipal Finance Act includes school districts within the definition of "municipality" as regulated by the Municipal Finance Act [Act 202, P.A. 1943, title as amended by Act 20, P.A. 1944 Ex. Sess., being C.L. '48 and C.L.S. '61 §§ 131.1 *et seq.*; M.S.A. 1958 Rev. §§ 5.3188(1) *et seq.*] The same section defines "obligations" as

" . . . evidences of indebtedness such as bonds, refunding bonds, notes, certificates of indebtedness and other like instruments . . . issued by a municipality, which on their face pledge the full faith and credit of the municipality and/or are payable primarily from taxes and/or special assessments."

Chapter III, Section 1 of the Municipal Finance Act [C.L. '48 § 133.1; M.S.A. 1958 Rev. § 5.3188(6) ] provides that

"No municipality shall hereafter borrow money and/or issue any obligations payable out of taxes or special assessments except in accordance with the provisions of this act."

In *School District No. 9 v. McLintock*, 255 Mich. 197, the Supreme Court ruled that to incur an obligation, as by purchase of land upon land contract, is to incur indebtedness, and further that to incur indebtedness is to borrow money. Inasmuch as the borrowing of money by a school district is governed by the provisions of the Municipal Finance Act as above set forth, it must follow that the acquisition of any buildings under the provisions of Act 23 of the Public Acts of 1963 which obligates the school district to payment from funds of future fiscal years, other than current funds, constitutes a debt and as such is subject to the approval of the Municipal Finance Commission. This approval is required whether such an obligation is described as a purchase, as a lease or as a title retaining contract.

FRANK J. KELLEY,  
*Attorney General.*

640316.1

CONSTITUTIONAL LAW: Equal protection of the laws.

CITIZENSHIP: Requirement for licensing.

BARBERS: Licensing.

Provision of section 10b(e), Act 382, P.A. 1927, as amended, requiring applicant for barber license to be citizen of the United States, is unconstitutional.

No. 4248

March 16, 1964.

Board of Examiners of Barbers  
702 Cadillac Square Building  
Detroit, Michigan

You have requested my opinion as to the authority of the Board of Examiners of Barbers to limit the issuance of licenses to citizens of the United States, in accordance with section 10b(e), Act 382, P.A. 1927, as amended,<sup>1</sup> which reads as follows:

<sup>1</sup> M.S.A. § 18.102; C.L.S. 1956 § 338.610b.