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APPROPRIATIONS: General – Supplemental.

GOVERNOR: Submission of budget and general appropriation bills to legislature.

LEGISLATURE: Consideration of governor's general appropriation bills.

OPERATING FUNDS: Governor's budget to cover proposed expenditures.

Pursuant to Section 18, Article V, Constitution of 1963, the governor is required to submit to the legislature his executive budget for the ensuing fiscal year containing in detail, for all operating funds, the proposed expenditures and estimated revenues of the state. The governor on the same date shall submit to the legislature general appropriation bills to embody the proposed expenditures and any bill or bills necessary to provide additional revenues.

Each house of the legislature is required by Section 31, Article IV, Constitution of 1963, to pass or reject the governor's general appropriation bills for the ensuing fiscal year covering the items set forth in the executive budget before that house passes any appropriation bill for items not in the executive budget except bills supplementing appropriations for the current fiscal year's operation. Supplemental appropriations defined and applied.

No. 4292

March 16, 1964.

The Honorable George Romney
Governor of Michigan
State Capitol
Lansing, Michigan

On February 5, 1964 you called a conference in your office for the purpose of discussing the interrelation, meaning, and application of Section 18, Article V, and Section 31, Article IV of the Michigan Constitution of 1963. Members of the legislature, members of my staff, representatives of the Department of Administration and others were present at that conference.

On February 6, 1964 you requested my opinion by the following letter:

"This letter is an outgrowth of the conference yesterday between the leadership of both the Senate and the House, together with representatives of your office and myself concerning the procedure to be followed regarding the submission and the ultimate passage of the appropriation bills.

"During the discussion a question arose concerning the first sentence of Sec. 31 of Article IV of the new Constitution, which states as follows:

"The general appropriation bills for the succeeding fiscal year covering items set forth in the budget shall be passed or rejected in either house of the legislature before that house passes any appropriation bills for items not in the budget except bills supplementing appropriations for the current fiscal year's operation."

"The question arose concerning the exception which relates to 'bills supplementing appropriations for the current fiscal year.'

"I would appreciate it if you would render an opinion, as soon as possible, concerning the meaning of that sentence, and particularly of

the exception. It would be my understanding that bills supplementing the current fiscal year's operation could be passed at any time during the current session so long as they related to an appropriation bill which had been passed previously. In particular, I am concerned with this provision as it may relate to the enactment of an ADC-U program because it may be necessary to supplement the current welfare appropriation if the enabling legislation is given immediate effect.

"For your information, provision has been made in the 1964-65 budget for an ADC-U program, so there is no question that the statute can be amended and the program enacted at this session.

"Not only do I desire a specific opinion concerning the ADC-U program, but I believe it would be most beneficial to this office and to the legislature, if a general interpretation of the first sentence of Sec. 31 of Article IV would be given."

Section 18 of Article V, Michigan Constitution of 1963, prescribes the procedure for the submission to the legislature of an executive budget; the submission by the governor to the legislature of general appropriation bills to meet the proposed expenditure; and the submission by the governor to the legislature of any necessary bill or bills to provide new or additional revenues to meet such proposed expenditures. Section 18 of Article V reads in its entirety as follows:

"The governor shall submit to the legislature at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail, for all operating funds, the proposed expenditures and estimated revenue of the state. Proposed expenditures from any fund shall not exceed the estimated revenue thereof. On the same date, the governor shall submit to the legislature general appropriation bills to embody the proposed expenditures and any necessary bill or bills to provide new or additional revenues to meet proposed expenditures. The amount of any surplus created or deficit incurred in any fund during the last preceding fiscal period shall be entered as an item in the budget and in one of the appropriation bills. The governor may submit amendments to appropriation bills to be offered in either house during consideration of the bill by that house, and shall submit bills to meet deficiencies in current appropriations."

The obligation imposed on the legislature regarding its action on general appropriation bills is set forth in Section 31, Article IV, which reads in its entirety as follows:

"The general appropriation bills for the succeeding fiscal period covering items set forth in the budget shall be passed or rejected in either house of the legislature before that house passes any appropriation bill for items not in the budget except bills supplementing appropriations for the current fiscal year's operation. Any bill requiring an appropriation to carry out its purpose shall be considered an appropriation bill. One of the general appropriation bills as passed by the legislature shall contain an itemized statement of estimated revenue by major source in each operating fund for the ensuing fiscal period, the total of which shall not be less than the total of all

appropriations made from each fund in the general appropriation bills as passed.”

The term “general appropriation bills” as used in Article V, Section 18, and in Article IV, Section 31, has no accepted meaning and it is therefore necessary to find the intent of the people in adopting the term in order to determine the respective obligation imposed by those sections on the governor and on the legislature. There is no definition of this term in the Michigan Constitution of 1963 nor has any decision by the Supreme Court of Michigan been found where it has been considered or defined.¹

Crucial to a decision of the nature and extent of the action required of the legislature under Section 31, Article IV, supra, is the determination whether the term “general appropriation bills” means only those general appropriation bills submitted by the governor pursuant to the mandate of Section 18, Article V, or does it embrace all general appropriation bills from whatever source including those submitted by the governor and those introduced by members of the legislature. Since the term itself does not indicate its scope, resort has been made to the debates of the delegates in the Constitutional Convention to ascertain if possible what intent and meaning the delegates ascribe to the descriptive term “general appropriation bills” at the time of the drafting of the foregoing quoted sections.

Section 18 of Article V and Section 31 of Article IV, had their origin in Committee Proposal No. 46 introduced by the chairman of the Committee on Executive Branch.² Committee Proposal No. 46 at the time of its introduction and when considered in the Committee of the Whole consisted of four parts designated as Sections a through d. It is important to our consideration of the pertinent question that the contents and order of arrangement of these four sections be understood. As they appeared in Proposal No. 46 at the time of consideration in the Committee of the Whole they may be identified as follows:

- Section a was the antecedent of Section 18, Article V
- Section b was the antecedent of Section 31, Article IV
- Section c was the antecedent of Section 19, Article V
- Section d was the antecedent of Section 20, Article V.

¹ In *Todd v. Hull* (1939), 288 Mich. 521, 531, an appropriation act was defined in these words:

“An act making an appropriation as used in the Constitution is a legislative act which sets apart or assigns to a particular purpose or use a sum of money out of what may be in the treasury of the State for specific purposes and objects,—an act authorizing the expenditure of public funds for a public purpose.”

In the following cases, each of which has been read and considered, the Court used the term “general appropriation bills” but in none of them was a definition given:

City of Montpelier v. Gates (1934), 170 Atl. 473, 475; 106 Vt. 116

State ex rel. Gammons v. Sorlie (1928), 219 N.W. 105, 108.; N.D. 650

State et al. v. Angle (1939), 91 P.2d 705, 708; 54 Ariz. 13

In re Opinion of the Justices (1938), 15 N.E.2d 813, 817; 300 Mass. 630.

State ex rel. Hudson v. Carter (1933), 27 P.2d 617; 167 Okla. 32; 91 A.L.R. 1497.

² Official Record, Constitutional Convention 1961, pp. 723, 1635.

At the time Committee Proposal No. 46 was first considered in the Committee of the Whole, the chairman of the Committee on Executive Branch as a part of the explanation of the proposal said:

"The 4 sections here proposed are deemed by this committee to embody minimum and basic essentials of an executive budget: * * *."³

In discussing Section a the chairman said:

"The next requirement of the section does 2 things: (a) it allows the introduction of executive amendments to general appropriation bills prior to final action of the legislature (final passage by both houses) to cover contingencies such as omissions, oversights or emergency situations that may arise; (b) it requires the executive to cause bills for deficiencies expected to occur in current appropriations to be submitted. The further intent of both provisions is to emphasize initial executive responsibility for all matters relating to budget preparation and submission in bill form for legislative consideration."⁴

Continuing with his explanation, the chairman said of Section b:

"The second provision is intended to accomplish 2 major points: (a) to focus legislative attention on the general appropriation bill or bills to the exclusion of any other appropriation bills, except those supplementing appropriations for the current year's operation; (b) to require the legislature (as well as the governor, by section a) to set forth by major item its own best estimates of revenue."⁵

A minority of the Committee on Executive Branch submitted a minority report to Committee Proposal No. 46. In that written report Section a was criticized for requiring a submission date and it was then said:

"The same criticism can be made of the requirement that the governor submit on the same date, general appropriation bills to embody the proposed expenditures and new or additional revenues to meet proposed expenditures."⁶

The minority report criticized Section b by saying:

"It is difficult to understand what is accomplished by delaying appropriation bills * * * until general appropriation bills are enacted into law. Certainly such a prohibition does not belong in the constitution."⁷

In the debate which followed in the Committee of the Whole, Mr. Faxon made reference to the model state constitution as containing a provision requiring the governor to submit general appropriation bills.⁸

³ Official Record, Constitutional Convention 1961, p. 1635.

⁴ Official Record, Constitutional Convention 1961, p. 1636.

⁵ Official Record, Constitutional Convention 1961, p. 1636.

⁶ Official Record, Constitutional Convention 1961, p. 1637.

⁷ Official Record, Constitutional Convention 1961, p. 1637.

⁸ The language quoted by Mr. Faxon from the model state constitution was as follows:

"The governor shall submit to the legislature, at a time fixed by law, a budget for the next fiscal year setting forth all proposed expenditures and anticipated income of all departments and agencies of the state, as well as the general appropriation bills."

Official Record, Constitutional Convention 1961, p. 1650.

The foregoing extracts from the Official Record of the Constitutional Convention make clear that the term "general appropriation bills" as used and understood by the delegates to the Constitutional Convention meant those general appropriation bills required to be submitted by the governor to the legislature at the same time he submits his budget, all as required by Section 18 of Article V, *supra*. Briefly stated, these are the governor's bills.

It should be noted that Section 18 of Article V does not require the governor to include in his executive budget, which he shall submit to the legislature, all of the proposed expenditures and estimated revenues of the state. Instead, the content of this budget is limited, Section 18 requiring only that the governor shall submit a budget for the ensuing fiscal period setting forth in detail *for all operating funds* the proposed expenditures and estimated revenue of the state. The Constitution of 1963 does not undertake to define the term "operating funds" but the nature of these funds is well understood in state government. Act 258 P.A. 1941, as amended by Act 174 P.A. 1952, provides for the state funds through which all state accounting or bookkeeping transactions are to be recorded.⁹ The 1941 act divided the state funds into the following main categories:

- Operating funds
- Trust and agency funds
- Sinking funds
- Revolving funds
- Common cash fund.¹⁰

The 1952 act designates the following funds as being "operating funds":

- The general fund
- Game and fish protection fund
- Michigan employment security act—administration fund
- State aeronautics fund
- Michigan veterans' benefit (trust) fund
- State trunkline fund
- Michigan state waterways fund
- Motor vehicle highway fund.

Since the time of the enactment of Act 174 P.A. 1952 the accounting division of the department of administration has classified by its accounting order three additional funds as operating funds. These are:

- School aid fund
- Watercraft law enforcement fund
- State park improvement fund.¹¹

⁹ C.L. 1948 and C.L.S. 1961 § 21.101 et seq.; M.S.A. 1961 Rev. Vol. § 3.606(1) et seq.

¹⁰ These classifications of state funds were changed in minor respects not important here by Act 174, P. A. 1952.

¹¹ The auditor general for many years has published a financial report covering financial data for the preceding fiscal year. The last such financial report covers the fiscal year ended June 30, 1963. Contained in Part 1 of the report is a chart of state funds containing the same listing and classification of operating funds as have been described above. Additionally the annual report of the state treasurer for the same fiscal period at page 16 lists the same operating funds and reports the balances on deposit to the credit of each fund account.

There appears to be ample opportunity for the governor to determine in the course of the preparation of his executive budget, the operating funds which are to be identified in his budget with a statement of his proposed expenditures from each such operating fund.

It necessarily follows also that the requirement of Section 18 imposing on the governor the duty to submit to the legislature general appropriation bills to embody the proposed expenditures as shown by the governor's budget relates to and means the expenditures proposed to be made from the operating funds.

Upon receipt of the governor's general appropriation bills, the legislature is required to take action pursuant to Section 31 of Article IV, *supra*, which section evolved from Section b of Committee Proposal No. 46. During the debates on Section b of Committee Proposal No. 46, the following explanation of its provisions was made:

"MR. STAMM: Mr. Chairman and members of the committee, this provision requires that the legislature must act on general appropriation bills for the next fiscal period before they may act on any other appropriation bill. This will focus the attention of the legislature on the operation of state government and possibly will avoid the panic and haste of trying to pass a budget in the closing minutes of the session. An exception is made for bills to supplement current operations, and the only purpose is to focus attention on the major task of each legislative session."¹²

In deciding the type of action to be taken by the legislature on the governor's general appropriation bills, the salient provision is contained in the mandatory words "shall be passed or rejected" appearing in the first sentence of Section 31, Article IV. In connection with legislation such expressions as "pass a bill," "pass an act," "passage of a bill through either house of the legislature," are common and well understood. Similar expressions appear in Sections 24, 26, 27, 28 and 29 which immediately precede Section 31 in Article IV. To pass or reject a bill required positive action by the members of the house in which the bill is pending. The outcome of the vote will determine whether the bill has been passed or been rejected by that house of the legislature. The fact that the legislature is required under Section 31 to pass or reject the general appropriation bills is a clear mandate which is not satisfied by referral to a committee for consideration. A roll call vote is required to satisfy the mandate. This conclusion is demonstrated by reference to the proceedings in the Constitutional Convention. Section b of Committee Proposal No. 46 as originally introduced read:

¹² Official Record, Constitutional Convention 1961, p. 1652.

Mr. Martin, chairman of the Committee on Executive Branch, made this explanation to the Committee of the Whole regarding Section b:

"The fundamental purpose of this section is to get the attention of the legislature to the main business of appropriations, that is, the general appropriation bills before it acts on so called special bills for this, that, or the other thing, which are thrown in by individual legislators * * *."

Official Record, Constitutional Convention 1961, p. 1653.

“GENERAL APPROPRIATION BILLS FOR THE SUCCEEDING FISCAL PERIOD SHALL BE ACTED UPON BEFORE EITHER HOUSE OF THE LEGISLATURE SHALL PASS ANY OTHER APPROPRIATION BILL, EXCEPT * * *.”¹³

The words “acted upon” were not changed by amendment during consideration in the Committee of the Whole and were retained in the Proposal as referred to Style and Drafting.¹⁴ When these sections were returned from Style and Drafting and reported to the Convention, the pertinent words of Section b had been changed to read:

“The general appropriation bills for the succeeding fiscal period covering items set forth in the budget shall be passed or rejected in either house of the legislature before that house passes any appropriation bill for items not in the budget except * * *.”¹⁵

The change in language proposed by the Committee on Style and Drafting was approved by the delegates to the Constitutional Convention and now appears as part of the first sentence of Section 31, Article IV, *supra*.

In my opinion each house of the legislature is required by Section 31, Article IV, Constitution of 1963, by a vote of its members to either pass or reject the governor’s general appropriation bills before that house passes any appropriation bill for items not in the budget except bills supplementing appropriations for the current fiscal year’s operation. This does not mean that the legislature is required to pass or reject the general appropriation bills in the precise form in which they were submitted to each house of the legislature, it being my opinion that either house of the legislature is at liberty to amend the governor’s general appropriation bills on general orders.

The restriction on each house of the legislature under Section 31, Article IV, that it must pass or reject the governor’s general appropriation bills before that house passes any [other] appropriation bill does not apply to an appropriation bill for an item or items which have been included in the governor’s budget. The restriction on each house of the legislature is to passage of appropriation bills for items not in the governor’s budget; such action being prohibited until that house has passed or rejected the governor’s appropriation bills.

Next for consideration is the meaning of the clause appearing in the first sentence of Section 31, Article IV, which reads:

“* * * except bills supplementing appropriations for the current fiscal year’s operation.”

It is generally known and understood that the State operates on a fiscal year basis commencing July 1 and ending on the ensuing June 30. By Section 13 of Article IV, Constitution of 1963, the legislature shall convene in regular session on the second Wednesday in January of each year. The general appropriation bills to be considered by a legislature convening in January of any given year are obviously bills for the appropriation of

¹³ Official Record, Constitutional Convention 1961, p. 1635.

¹⁴ Official Record, Constitutional Convention 1961, p. 1680.

¹⁵ Official Record, Constitutional Convention 1961, p. 2767.

monies to become available during the next succeeding fiscal year beginning July 1. General appropriations for the fiscal year in which the legislature convenes in January have already been made and became available on the antecedent first of July. There will also be some appropriations of a continuing nature, such as capital outlay, which carry forward from the fiscal year when first authorized into succeeding fiscal years and which are to be included as part of the appropriations for the current fiscal year's operation. Thus, "bills supplementing appropriations for the current fiscal year's operation" must refer to the supplementation of appropriations that have theretofore been made.

The Michigan Supreme Court in the case of *Doyle v. City of Saginaw*, 258 Mich. 467, 475, made this statement:

"A supplemental act is one designed to improve an existing statute, by adding something thereto without changing the original text. *McCleary v. Babcock*, 169 Ind. 228 (82 N.E. 453); *Loomis v. Runge*, 14 C.C.A. 148 (66 Fed. 856). Supplemental statutes include every species of amendatory legislation which goes to complete a legislative scheme. *Rahway Sav. Institution v. Common Council of Rahway*, 53 N.J. Law, 48 (20 Atl. 756); *First State Bank of Shelby v. Bottineau County Bank*, 56 Mont. 363 (185 Pac. 162, 8 A.L.R. 631)."

There is no ambiguity in the language of Section 31, Article IV permitting consideration of supplemental appropriations for the current fiscal year's operation. Section 17, Article IX, Constitution of 1963 reads:

"No money shall be paid out of the state treasury except in pursuance of appropriations made by law."

It seems obvious that these are the appropriations which may be supplemented. Since the language of Section 31 permits consideration of bills supplementing appropriations for the current fiscal year's operation, it seems clear that something more than a deficiency appropriation is contemplated. The language of the Constitution is broad enough to permit an adding of additional amounts to the current year's appropriation even though no deficiency then exists. If a state agency, department or commission has already received an appropriation from the legislature for the current fiscal year involved, such appropriation may be supplemented. It is only where no prior appropriation exists that a bill having to do with the authorization of an expenditure for the current fiscal year's operation cannot be regarded as a supplemental appropriation bill. By way of illustration, if a bill is pending in the legislature to create a new commission, board or agency separate and apart from any board, bureau or agency theretofore existing with the provision to give the bill immediate effect and containing an appropriation for the balance of the current fiscal year's operation, should the bill be enacted into law, then it is apparent that such a bill is not one making a supplemental appropriation since no prior appropriation has ever been made.

In the situation last above described by way of illustration, it would be permissible for either house of the legislature to consider such a bill before passing or rejecting the general appropriation bills if a proposed expenditure for the ensuing fiscal year to the newly created bureau, board or agency

appeared as an item in the governor's budget. Section 31, Article IV, permits as an exception consideration of such items and does not limit such consideration to appropriations for the ensuing fiscal year.

Under date of February 21, 1964 I furnished you my written opinion by letter as to the constitutionality of the ADCU program then pending before the legislature in the form of H.B. 190 and H.B. 234. I advised you that the substantive proposals for ADCU as they then appeared in the respective house bills were constitutional. I further advised you that an appropriation in the amount of \$900,000.00 to the Department of Social Welfare made by Act 221, P.A. 1963, would be available for the balance of the current fiscal year for the matching of federal funds under the ADCU program if enacted into law provided the legislature made the necessary and appropriate amendments releasing this sum to the current ADCU program upon its enactment into law. I consider my letter of February 21, 1964 as fully answering this portion of your request and there is therefore no necessity for further repetition.

FRANK J. KELLEY,
Attorney General.