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**GOVERNOR:** Use of anticipated surplus in estimating revenues.

**BUDGET:** Inclusion of anticipated surplus in governor's budget as a part of estimated revenue.

Pursuant to Sec. 18, Art. V, Constitution of 1963, governor is required to submit to the legislature a budget for the ensuing fiscal year setting forth in detail, for all operating funds, proposed expenditures and estimated revenue of the state. Under this section the amount of any surplus created or deficit incurred in any operating fund during the last preceding fiscal period shall be entered as an item in the budget and in one of the appropriation bills. In addition to the predetermined surplus at the end of the prior fiscal year, the governor may include in his estimate of revenue to meet proposed expenditures an item of surplus, if any, reasonably determined by him to become available in any operating fund at the beginning of the ensuing fiscal year to which his budget relates.

No. 4312

April 8, 1964.

Representative Carroll C. Newton  
House of Representatives  
Lansing, Michigan

Your letter refers to Section 18, Article V, Michigan Constitution of 1963, and continues:

"A question has arisen relative to the estimation of revenue in view of the second and fourth sentences of Section 18 which read: 'Proposed expenditures from any fund shall not exceed the estimated revenue thereof.' and '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.' (Emphasis supplied.)

"Page 1648 of the constitutional convention record shows that the underscored words were intended to mean the last completed fiscal year, which as of today means the fiscal year which ended June 30, 1963. The general fund showed a deficit in excess of 22 million dollars as of that date. The executive budget revenue estimate for fiscal 1964-65 anticipates a surplus in the general fund on June 30, 1964, which together with other estimated revenues results in a sum sufficient to cover the proposed expenditures in the executive budget. Without the estimated surplus, the expenditure recommendations exceed anticipated revenue.

"The opinion of your office is desired on the following questions:

"Where a deficit existed in a fund at the end of the last preceding fiscal period (1963), may an anticipated surplus for the current fiscal year (1964) be estimated and deemed a part of estimated revenue for the next fiscal year (1965), under the constitution?"

"If an estimated surplus for 1964 is to be deemed available to balance the budget for 1965 then how is budgeting for 1966 affected, when under the constitution the actual surplus or deficit for 1964 must be taken into consideration? In other words how is the surplus (both esti-

mated and actual) for 1964 to be used twice in budgeting for both 1965 and 1966?"

The full text of Section 18, Article V, Michigan Constitution of 1963, is 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 reference to "the last preceding fiscal period" appearing in the fourth sentence of Section 18, and underscored by you in your request, undoubtedly means in the context in which used—the last full fiscal year of the state nearest in time to the date the governor submits his budget to the legislature. The computation of this period was discussed in Opinion No. 4292 issued by me on March 16, 1964 and it was there pointed out that the state operates on a fiscal year basis commencing July 1 and ending on the ensuing June 30. As there stated, by Section 13 of Article IV, Michigan Constitution of 1963, the legislature is required to convene in regular session on the second Wednesday in January of each year. Therefore the last preceding fiscal period to be taken into account by the governor in preparation of his budget for submission to the legislature in January would be the fiscal year of the state ending on the prior June 30.

The fourth sentence of Section 18, Article V, Michigan Constitution of 1963, requires that there shall be entered as an item in the governor's budget and in one of the appropriation bills the amount of any surplus created or deficit incurred in any [operating] fund during the last preceding fiscal period. Applying this constitutional directive to the governor's budget submitted to the 1964 regular session of the legislature, the surplus or deficit to be used would be that appearing in any operating fund<sup>1</sup> as of June 30, 1963. The governor's compliance with this requirement as it relates to the general fund is shown in the appendix forming a part of the executive budget submitted to the current regular session of the legislature for the fiscal year July 1, 1964 - June 30, 1965. At page ix of The Executive Budget, being the first page of the Budget Message Appendix, under the heading "The General Fund Budget," appears the statement "Beginning Deficit, July 1, 1963 . . . . . \$(22.8)." There is thus recorded the deficit of \$22,800,000.00 (rounded) appearing in the general fund at

<sup>1</sup> The term "operating funds" is discussed and the present funds enumerated in Opinion No. 4292 issued by me on March 16, 1964.

June 30, 1963. As an additional step, in conformity with the constitutional requirement that the surplus or deficit shall be entered as an item "in one of the appropriation bills," the following language appears in identical form as Section 2 of Senate Bill No. 1279 and House Bill No. 537, each of which was one of the general appropriation bills submitted by the governor to the current regular session of the legislature:

"In accordance with section 18, Article V, 1963 Constitution the amount of the general fund deficit during the last preceding fiscal period is hereby reported at \$22,834,662.00 as of June 30, 1963. The estimated operating surplus for the period July 1, 1963 through June 30, 1964 is \$61.7 million, resulting in a projected year-end surplus general fund balance of \$38.9 million as of June 30, 1964. This estimated balance sheet surplus of \$38.9 million, together with estimated general fund-general purpose revenues of \$674.6 million, would produce available resources of \$713.5 million for the budget fiscal year July 1, 1964 through June 30, 1965."

The questions you have stated in your request are no doubt prompted by the language appearing in above-quoted Section 2 which makes clear that the governor estimates that the deficit in the general fund of \$22.8 million as of June 30, 1963 will have been replaced by the surplus in the general fund at June 30, 1964 estimated to be \$38.9 million. Basically your questions relate to the permissibility of using as a revenue source estimated surplus of \$38.9 million expected to be on hand in the general fund on June 30, 1964 in determining the estimated revenue of the state which the governor proposes to use in meeting the proposed expenditures outlined in his executive budget for the fiscal year of the state commencing July 1, 1964.

It is appropriate to note that the Constitution of 1963 does not undertake to define either "surplus" or "deficit" which are to be entered as an item in the budget and in one of the appropriation bills. No other method being prescribed, it is appropriate and proper to determine these balances, be they deficit or surplus, in any operating fund in accordance with the accounting procedure of the state in effect at the time any such determination of surplus or deficit is required to be made. Ultimately surplus or deficit appearing at the fiscal year end in an operating fund will result from the entries in the fund made during the fiscal year in accordance with the then established accounting procedures and accordingly the surplus or deficit balance at the fiscal year end so recorded is the one to be used.

The provisions of Section 18, Article V of the Constitution of 1963, impose on the governor for the first time by constitution the requirements of submitting to the legislature an executive budget, the governor's general appropriation bills and any necessary bill or bills to provide new or additional revenues to meet proposed expenditures. The Address to the People explains the purpose of this new revisionary language in this way: "This is a new section intended to establish a constitutional executive budget procedure for the orderly management of the state's fiscal affairs." The only directive which the Constitution gives to the governor as to the contents of his budget is that it shall be "for the ensuing fiscal period setting forth in detail, for all operating funds, the proposed expenditures and estimated

revenue of the state." If the term "budget" can be given effective meaning by use of the natural signification of the word where employed in the context in which it appears, there is no necessity to resort to further construction.<sup>2</sup> No Michigan court decision has been found defining the word budget but the courts of last resort of other states have given it its usual and ordinary meaning. In the case of *White v. Harrell* (1932), 259 N.Y.S. 1, the Supreme Court of New York, Appellate Division, said:

"A 'budget,' be it national, state or city, is an estimate as to the probable expenditures to be incurred during the ensuing year, and of revenues hoped for with which to pay."<sup>3</sup>

The California District Court of Appeal in *Davidson et al. v. Burns et al.* (1940), 100 P. 2d 1105, 1107, gave a simple definition by saying:

"The word 'budget' means a financial statement of the probable revenues and expenditures for the ensuing year."

Examining the language of Section 18, Article V, requiring the submission of an executive budget in the light of the court definitions of the term, it becomes apparent that the type of budget expected from the governor is no different and is in fact the same as any other budget which has for its purpose the portrayal of proposed expenditures and the counterbalancing statement of estimated revenues from which it is anticipated the expenditures will be made. The Michigan Constitution of 1963 does not undertake to limit or control the proposed expenditures which the governor may include in his executive budget except to say that they shall cover all operating funds of the state. The governor has the prerogative to develop his own expenditure program. He is required by the Constitution to state in his budget an estimate of the revenues of the state from which he expects to meet the expenditures which he proposes. What are the sources of revenue available to him for that purpose?

A leading case often cited in the opinions of the courts of other states is *Commonwealth v. Brown*, 91 Va. 762, 21 S.E. 357, decided by the Supreme Court of Appeals of Virginia in 1895. In the course of its opinion the Virginia Court said:

"The object of the tax is concisely but expressly stated. It is 'to obtain revenue.' What is 'revenue'? It is the income which a state collects and receives into its treasury, and is appropriated for the payment of its expenses." (p. 363)

The Supreme Court of Oregon in *Fullerton v. Central Lincoln People's Utility Dist. et al.* (1948), 185 Or. 28, 201 P. 2d 524, 526 resorted to the definition appearing in Black's Law Dictionary and quoted with approval the following statement:

"'Revenue' is the term generally used in referring to the income of a government or governmental subdivision, and, as so used, means 'all

<sup>2</sup> *People v. Board of State Canvassers*, 323 Mich. 523.

<sup>3</sup> This decision was affirmed in 269 N.Y.S. 702, the Court dividing on an issue not pertinent here. The definition appearing in *White v. Harrell* was quoted with approval by the New York Supreme Court, Appellate Division, in the later case of *Collins v. City of Schenectady* (1939), 10 N.Y.S. 2d 303, 306.

public moneys which the state collects and receives, from whatever source and in whatever manner.'"<sup>4</sup>

In discussing to what extent surplus, either actual or estimated, may be included by the governor as a source of revenue, a specific situation will be used for the sake of clarity. Although the governor is required to include all operating funds in his budget, it will serve for the purposes of illustration to limit this example to the general fund. The Michigan Constitution of 1963 went into effect January 1, 1964 and the governor was required by Section 18 of Article V to submit his executive budget to the legislature which convened in regular session on January 8, 1964. The governor was required to record as an item in that budget the amount of any surplus or deficit in the general fund which appeared at the close of the last preceding fiscal period. This date was June 30, 1963 and at that time there was a deficit in the general fund of \$22.8 million. Obviously there was no source of revenue there. But as appears from the Section 2 statement of Senate Bill No. 1279 and House Bill No. 537, *supra*, it was estimated that the deficit would be wiped out and that by the end of the fiscal year on June 30, 1964 there would be a surplus in the general fund of \$38.9 million. Clearly this is an estimate and will remain such until the balance in the general fund is fixed as of June 30, 1964.

The governor's budget, his proposed expenditures and estimate of revenues under the Constitution are submitted to the legislature for the fiscal period of the state under our example commencing on July 1, 1964 and ending June 30, 1965. The governor can estimate with reasonable accuracy the revenues which the state will receive from taxation during the ensuing fiscal period to which his budget appertains. When submitting his budget in January 1964, may he also anticipate that there will be a surplus in the general fund at June 30, 1964 which he may draw on as a source of revenue to meet his proposed expenditures for the fiscal year July 1, 1964 through June 30, 1965? If he cannot do this, then the fiscal period in which he prepares and submits his budget with his proposed expenditures and revenue estimates must be regarded for the governor's purposes as a "dead year." To accept such a conclusion will have far-reaching effects. If the condition of the state's economy is such that it reasonably appears to the governor there will be a surplus in the general fund at the beginning of the fiscal year for which he is submitting his budget, there appears to be no sound reason either in the law or in the management of the fiscal affairs of the state why such anticipated surplus may not be regarded as a useable source of revenue. To disregard this source of revenue would mean that the governor must curtail his proposed expenditures in a corresponding amount or some part thereof or the governor must seek new revenue from additional taxes. To illustrate, suppose the governor can predict with reasonable certainty there will be a surplus in the general fund on June 30, 1964 of fifty million dol-

<sup>4</sup> For similar definitions of the word "revenue" see the cases of *Davis v. Phipps* (1935), 191 Ark. 298, 85 S.W.2d 1020, and *City of Phoenix v. Arizona Sash, Door & Glass Co.* (1956), 80 Ariz. 100, 293 P.2d 438.

lars—if he cannot regard this sum as a revenue source he might be required to ask the legislature to raise by additional taxation further revenues of fifty million dollars to become available for the fiscal period commencing July 1, 1964. This would produce the absurd situation at July 1, 1964 of the people being subjected by legislation to the payment of new taxes to raise fifty million dollars when on the same date there was an unencumbered surplus balance in the general fund of fifty million dollars. I am unwilling to subscribe to an interpretation of the constitutional provision which would make such an illogical situation possible. I therefore conclude that the governor does not violate the provisions of Section 18, Article V, Michigan Constitution of 1963, by including in his estimate of revenue of the state for the ensuing fiscal period to which his proposed expenditures relate an amount representing his estimate of surplus, if any, in the various operating funds at the beginning of such fiscal period.

I answer your first stated question in the affirmative.

I answer your second question by saying that the conclusions which I have expressed herein do not in my judgment result in the same item of surplus being used twice in budgeting. To revert to the examples hereinbefore given, if the governor includes in his estimate of revenues submitted to the legislature in January 1964 an item of surplus which he expects will appear in the general fund at June 30, 1964, it is but an estimate which the legislature may evaluate as a part of the function imposed on it by Section 31, Article IV, Michigan Constitution of 1963. By section 31 the legislature is required to set forth in one of the appropriation bills as passed by it an itemized statement of estimated revenue by major source in each operating fund for the ensuing fiscal period. For the same reasons hereinbefore given, it appears to me that the legislature as well as the governor may include in its itemized statement of estimated revenue by major source an anticipated surplus, if any, in the several operating funds. I take note of the fact that Section 31 does not require the legislature to enter as an item in the appropriation bill passed by it the amount of any surplus created or deficit incurred in any [operating] fund during the last preceding fiscal period. In this respect the language of Section 31 of Article IV differs from the language of Section 18 of Article V. But as heretofore explained, this is not the item of surplus with which we are here concerned but instead it is the unascertained surplus, if any, which is estimated to be on hand at the beginning of the ensuing fiscal year. Like the governor, if the legislature is not at liberty to include this anticipated surplus as a source of estimated revenue, it would be required to look to new taxation as a substitute.

In conclusion I call your attention to the safeguard written into Section 20 of Article V, Michigan Constitution of 1963, should it develop that the item of anticipated surplus included as a source in the estimate of revenue ultimately adopted by the legislature was overstated and therefore not available to support the appropriation bills as enacted. Section 20 requires:

“\* \* \*. The governor, with the approval of the appropriating committees of the house and senate, shall reduce expenditures authorized by appropriations whenever it appears that actual revenues for a fiscal

period will fall below the revenue estimates on which appropriations for that period were based. Reductions in expenditures shall be made in accordance with procedures prescribed by law. \* \* \*."

FRANK J. KELLEY,  
*Attorney General.*

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**SOCIAL WELFARE: Responsible Relative Law: Poor Law. Indigent persons, parent receiving Aid to Dependent Children grant construed as "poor person" under Section 2 of the Michigan Poor Law for purposes of enforcing Michigan Responsible Relative Law.**

No. 4188

April 9, 1964.

Mr. James G. Fleming  
Prosecuting Attorney  
Jackson County  
Court House  
Jackson, Michigan

The Opinion of the Attorney General is sought on the following question:

"Is a parent or other relative who receives aid to dependent children for, in behalf of, and/or by virtue of minor children living in his or her home, a 'poor person' within the meaning of Section 1 of the General Poor Law of 1925 (M.S.A. 16.121), which in part defines a 'poor person' as a person who has some means but is eligible to receive relief or assistance granted under the provisions of the Social Welfare Act?"

The statute referred to is Act 146 of the Public Acts of 1925 as amended, usually referred to as the Responsible Relative Law<sup>1</sup>, which at Section 1 in pertinent part provides as follows:

"The words 'poor person' as used in this act shall be construed to mean one who has no property, exempt or otherwise, and who is unable, because of physical or mental disabilities or age, to earn a livelihood, or a person who has some means but is eligible to receive relief or assistance granted under the provisions of the social welfare act. . . ."

It is stated in the request for opinion that this definition has caused problems of interpretation which are typified by the following examples:

"(1) A daughter who no longer lives with her parents (either divorced or has illegitimate children) may require public assistance because she has one or more minor children living in her home. She could provide for her own needs but having a child or children, she must depend upon the receipt of aid to dependent children assistance to provide for her family. The question arises as to the liability of her parent or parents for her support under the provisions of Section 2 and 3 of the General Poor Law of 1925 (Michigan Statutes Annotated 16.122-23 and subsequent sections). If the question posed is answered

<sup>1</sup> C.L. '48 and C.L.S. '61 §§ 401.1 *et seq.*; M.S.A. 1960 Rev. §§ 16.121 *et seq.*