

1640409.2

MUNICIPAL FINANCE COMMISSION: Municipal Finance Commission has authority to order spot check of municipalities to determine whether special assessment bond proceeds were used for purposes specified in application, or diverted to other purposes.

No. 4268

April 9, 1964.

Mr. E. Boomie Mikrut, Director
Municipal Finance Commission
Box 448
Lansing, Michigan 49802

You have requested my opinion on the following question:

"What is the authority of the Municipal Finance Commission to order a spot check of municipalities to determine whether special assessment bond proceeds were used for the purposes contained in the application to the Municipal Finance Commission or diverted to other purposes?"

The Municipal Finance Act¹ provides, at Chapter II, Section 2, in pertinent part as follows:

"The commission is authorized and directed to protect the credit of the state and its municipalities, and to enforce the provisions hereof, and to that end is hereby given the following general powers:

"* * * (d) To examine the books and records of any municipality for the purpose of ascertaining if such municipality is complying with the requirements of the commission, the statutes of the state of Michigan, and its charter, ordinances and resolutions, in relation to its obligations, and for such purposes it may require sworn statements from any officer or employee of such municipality, or may require such municipality to furnish it with a statement of its financial conditions. * * *"²

Special assessment bonds are among the "obligations" issuable by municipalities,³ even though special assessment bonds do not obligate the full faith and credit of the municipality. The bondholders look to the municipality for payment, which thus is obligated by the provisions of the bonds to levy and collect the special assessment and to see that the improvement is made for which the benefited district is assessed.⁴

A plain reading of the quoted portion of the statute brings me to the conclusion and it is my opinion that the Municipal Finance Commission has the

¹ Act 202, P.A. 1943, Title as amended by Act 20, P.A. 1944 (Ex. Sess.); C.L. '48 §§ 131.1 *et seq.*; M.S.A. 1958 Rev. §§ 5.3188 (1) *et seq.*

² C.L. '48 § 132.2; M.S.A. 1958 Rev. § 5.3188 (4).

³ C.L. '48 § 131.2; M.S.A. 1958 Rev. § 5.3188(2) at subparagraph (c).

⁴ See *Callaghan v. City of Berkley*, 307 Mich. 701, where the court said that special assessments are a trust fund for payment of special assessment bonds; *Township of Royal Oak v. City of Pleasant Ridge*, 295 Mich. 284, 290-301, court saying that the municipality is a guarantor obligated to advance money for prompt payment of the bonds, though this does not make special assessment bonds a "debt" of the municipality. And see 48 Am. Jur., Special or Local Assessments, § 277, p. 773, stating rule to be that municipalities are liable because of diversion of funds paid to them on account of special assessments.

power to "spot check" municipalities to determine whether special assessment bond proceeds are being diverted from the purposes specified in applications upon which state approval of such bond issues were based.

FRANK J. KELLY,
Attorney General.

640409.3

CONSTITUTIONAL LAW: Legislature.

A legislator is serving in the legislature when he has been elected to either the House of Representatives or the Senate, has taken the oath of office and been seated by the house to which he was elected. He is "serving" as a member of the legislature so long as he has the right to occupy a seat in the house to which he was elected. His right to serve may be terminated in accordance with provisions of the Michigan Constitution and applicable sections of the Michigan Election Law.

No. 4281

April 9, 1964.

Hon. John W. Fitzgerald
Senator
The Capitol
Lansing, Michigan

You ask my opinion of the meaning of the words "and serving in" as used in provisions of the Michigan Constitution of 1963 referring to a majority of senators elected to and serving in the Senate. For example, Article IV, Section 14, requires the presence of a majority of the senators elected to and serving in the Senate to constitute a quorum to do business; expulsion of senators may be ordered by a two-thirds vote of all of the senators elected and serving in the Senate in accordance with Article IV, Section 16; no bill shall become a law without the concurrence of a majority of the members elected to and serving in each house as set forth in Article IV, Section 26.

Your question arises because the word "serving" was added in the Michigan Constitution of 1963 and specifically was not found in the Michigan Constitution of 1908. The constitutional provision at issue is clear when given its ordinary meaning and no legal construction is required. *People v. Board of State Canvassers* (1949), 323 Mich. 523.

A legislator is serving in the legislature when he has been elected to either the House of Representatives or the Senate, has taken the oath of office and has been seated by the house to which he was elected. He continues to serve unless he vacates his office.

Whether or not his office has been vacated depends upon the application of the following rule: An office is not vacant so long as it is supplied in the manner provided by law with an incumbent who is legally qualified to exercise the powers and perform the duties which appertain to it; and, conversely, an office is vacant whenever it is unoccupied by a legally qualified incumbent who has a lawful right to continue therein until the happening of some