

There can be no question but that the framers intended that the period for disapproval should extend to the next regular or special session.

Officers appointed by the governor may be confirmed at a special session of the legislature. OAG 1912, p. 302. See, also, OAG 1947-48, p. 513, which held that the legislature could consider a joint resolution proposing a constitutional amendment at special session even though such matter was not included in the message of the governor.

Article IV, Section 13 of the Michigan Constitution expressly provides that business pending at the final adjournment of a regular session held in an odd numbered year shall carry over with the same status to the next regular session. An appointment sent to the senate in an odd numbered year and unacted upon by the senate, 60 session days not having elapsed, would carry over to the next regular session without resubmission of the appointment. The Constitution does not provide that unfinished business pending before one legislature shall carry over to the succeeding legislature.

Historically the Michigan legislature has served for periods of two years and have been identified by number. For example, the present Michigan legislature has served as the 72nd Michigan Legislature, sitting in the 1963 regular session and the 1964 regular session, with such additional special sessions as were called by the governor pursuant to his constitutional power.

An examination of the debates of the Constitutional Convention and the Address to the People fails to reveal any indication of intent on the part of the framers or the people to extend the words "60 session days" from one legislature to another. On the contrary, the intent seems clear that the period of "60 session days" is restricted to one legislature.

Therefore, it is the opinion of the attorney general that the period "60 session days" as set forth in Article V, Section 6 of the Michigan Constitution of 1963, includes all regular and special sessions of one legislature, such as the 72nd Legislature and not carried over to the 73rd Legislature.

FRANK J. KELLEY,
Attorney General.

641103.2

RETIREMENT SYSTEMS: School Employees—Retirement Board.

An appointee to the office of member of the Public School Employees' Board, created under Sec. 3 of Chapter I, Act 136, P.A. 1945, as amended, must be a member of the Retirement System.

No. 4359

November 3, 1964.

The Honorable George Romney
Executive Office
The Capitol
Lansing, Michigan

In your recent letter you state that you have appointed Mr. Clifford Seys of Grand Rapids to the Michigan Public School Employees' Retirement Board. This appointment has been challenged by the executive secre-

tary of that Board because Mr. Seys is not a public school employee and, therefore, not a member of the Retirement System. You state that the appointee is a person with extensive experience in the insurance industry and that this background would qualify him to make a beneficial contribution as a member of the Board. Correspondingly, you ask if Mr. Seys could serve as a member of the Public School Employees' Retirement Board as a non-teaching member, even though he is not a member of the Retirement System.

Under Act 136, P.A. 1945, as last amended by Act 102, P.A. 1963, C.L.S. 1961 § 38.201, et seq.; M.S.A. Cum. Supp. § 15.893(1), et seq., which provides for a retirement system for certain Michigan public school employees under Chapter I of the act, administration and management are vested in a retirement board by Section 2. Section 3 of the Act, C.L.S. 1961, § 38.203; M.S.A. 1959 Rev. Vol. § 15.893(3), creates the office of Board member. It reads in pertinent part as follows:

"(a) There shall be a Michigan public school employees' retirement board consisting of the superintendent of public instruction and 6 other members appointed by the governor by and with the advice and consent of the senate. At least 1 of such members shall be a woman teacher, and at least 1 shall be a non-teaching public school employee: Provided, That the number of non-teaching members of the retirement board shall at no time exceed the ratio of non-teaching to teaching members of the retirement system."

As used in Chapter I of the act, being the same chapter that creates the office of member of the retirement board, the term "member" is defined in Section 1 (c) of the Act, M.S.A. 1963 Cum. Supp. § 15.893(1)(c):

"'Member' means any Michigan public school employee as defined in subsection (f) of this section."

Subsection (f) defines "public school employee" in great detail. Essentially the definition includes all who shall belong to and participate in the System.

In construing the requirements for an appointee to the Board, the basic rule of statutory construction must be observed. This rule dictates that legislative intention be ascertained, giving effect and consideration to the enactment as a whole. *People v. Babcock*, 343 Mich. 671; *Pittsfield School District v. Washtenaw*, 341 Mich. 388. It is within this framework that the observations which follow are made.

It is apparent that the word "member" is used in two senses in Section 3—member of the Board and member of the Retirement System. Since Section 3 creates the office, the first use of "member" refers to members of the Board. In the proviso, members of the Retirement System are mentioned. An examination of the Section, however, indicates a legislative intent that Board member appointees be members of the Retirement System as well. Several reasons underlie this conclusion.

In creating the office of Board member, the word "person," "appointee" or a technical term such as "trustee" could have been used. Since such terms were not used and the term "member" was employed, it can be as-

sumed that the term was used not only to create the office but was intended to carry its full meaning as defined by Section 1(c) as well.

The proviso set forth in Section 3 of Chapter I of the Act requires that membership on the retirement board of non-teaching members of the system not exceed the ratio of non-teaching to teaching members of the system. The definition of "member" appearing in Section 1(c) of Chapter I of the Act applies to the office of member of the retirement board. This definition includes non-teaching members of the retirement system. In appointing from their membership in the system to the retirement board, the ratio of non-teaching to teaching members of the system must be observed.

There is no authority in the Act for the appointment of a non-member of the system, teaching or non-teaching, to the office of member of the retirement board created by Section 3 of Chapter I of the Act.

In accordance with the above reasons, and with the history of Retirement Board membership during which no non-member of the System has ever served as a member of the Retirement Board, it is my opinion that an appointee to the office of member of Michigan Public School Employees' Retirement Board, as set forth in Section 3 of Chapter I of the Act, must be a member of the retirement system. Therefore, Mr. Seys would not be eligible to serve as a member of that Board.

FRANK J. KELLEY,
Attorney General.

64110.1

SCHOOLS: Requirement of insurance as a condition for students to participate in interscholastic athletic activities.

The board of education of a school district is without authority to bar students, otherwise eligible, from participation in interscholastic athletic activities because the student is not covered by insurance.

No. 4324

November 10, 1964.

Hon. Frederic J. Marshall
State Representative
White Marble Springs
Allen, Michigan

You have requested my opinion on the following questions:

1. Does the board of education of a school district have authority to bar a student from participation in sports if he is not covered by insurance?
2. Does the board of education of any school district have the legal right to compel parents to purchase insurance from an insurance company selected by the board of education as a condition for the participation of their children in sports?

Your letter does not specify the type of insurance which is involved.

Act 269, P.A. 1955, as amended, being CLS 1961 § 340.1 et seq.; M.S.A. 1959 Rev. Vol. § 15.3001 et seq., is known as the school code of 1955.