

state law requiring purchase of a county license, having accomplished the purpose by compliance with the ordinance.

It is well established that the legislature may carry out the exercise of state police power through municipalities.<sup>16</sup>

Therefore, I am brought to the conclusion that the City of Lansing, in selling licenses to dog owners resident in the city, is carrying out the state police power in a manner prescribed by the legislature, and that no duality of regulation is perceptible in the legislative intent. It therefore follows that the county is no longer required or permitted to sell licenses to Lansing dog owners.

To the extent that O.A.G. No. 87, dated July 16, 1935, is in conflict herewith, it is hereby superseded.

FRANK J. KELLEY,  
*Attorney General.*

641201-4

**COUNTIES:** Authority to bill school districts for bond premiums.  
**SCHOOLS:** Districts—Duty to pay for bond premiums.

County treasurer may bill school districts for allocated share of bond premiums charged for surety bonds for school taxes, but only for the current tax year for which school taxes the surety bond is secured and the premium is paid by the county treasurer.

No. 4368

December 1, 1964.

Mr. Francis D. Brouillette  
Prosecuting Attorney  
Dickinson County  
Iron Mountain, Michigan

You advise that the Dickinson County Treasurer has just recently billed school districts within Dickinson County the prorata share of the bond premium, pursuant to Section 43 of Act 206, P.A. 1893, as amended, for the years 1959, 1960, 1961, 1962 and 1963, and several school districts have refused to pay the charges claiming that failure to make claim during the year of the bond charge amounted to a waiver of the charge for that year. Apparently claim for the aforesaid years was first made in 1964.

Based upon these facts, you request opinion upon the following question:

May the county treasurer lawfully bill school districts for the allocated share of the cost of bond premiums required by law for all past years which are not barred by the statute of limitations?

Section 43 of Act 206, P.A. 1893, as last amended by Act 103, P.A. 1951, being C.L.S. 1961 § 211.43; M.S.A. 1960 Rev. Vol. § 7.84, requires a township treasurer to give annually to the county treasurer a bond running to the county in the actual amount of county and school taxes to be collected by him with sufficient sureties as required by law. Where the bond

<sup>16</sup> See, for example, *Wetherby v. City of Jackson*, 264 Mich. 146, 148 (burial). The cases are collated in *Tower Realty v. City of East Detroit*, 196 F 2d 710.

is furnished by a surety company, the bond need not exceed forty percent of the actual amount of county and school taxes, and the premium and cost of such bond shall be paid by the county treasurer from the general fund of the county,

“Provided, however, That the county treasurer having so paid the premium *may* bill each district school board afforded protection by said bond, that portion of the premium charge as is allocated to the school taxes, and the school district treasurers shall pay such allocated premium charge as determined by the county treasurer for the protection of school taxes from available school district funds: \* \* \*.”  
(Emphasis supplied)

Prior to amendment by means of Act 103, P.A. 1951, Section 43 read in pertinent part:

“\* \* \* the county treasurer having so paid the premium *shall* bill each district school board afforded protection by said bond, \* \* \*.”  
(Emphasis supplied)

The billing was for an allocated share of the cost of the bond.

The amendment of Section 43 of Act 206, P.A. 1893 by Act 103, P.A. 1951, to substitute the word “may” for the word “shall” in the part of the statute which is here in issue must be construed as changing the meaning and effect of the statute. *Lawrence Baking Co. v. Unemployment Compensation Commission*, 308 Mich. 198 (1944).

The word “shall,” when used as a command to a public official, excludes the idea of discretion. *Township of Southfield v. Drainage Board for Twelve Towns Relief Drains*, 357 Mich. 59 (1959). The manifest intent of the legislature in employing the word “may” instead of “shall” was to make the statute permissive instead of mandatory. *State ex rel Laurisch v. Pohl* (Minn. 1943) 8 N.W. 2d 227.

The statute so amended does not prescribe the time for billing the school districts the allocated share of the bond premium should the county treasurer choose to make such a billing. The statute being silent, the billing of school districts must be made within a reasonable time. *State ex rel. Laurisch v. Pohl*, supra.

Since the bond premium is directly related to school taxes for a particular tax year, having been paid by the county treasurer from the general funds of the county during a particular tax year, and when billed by the county treasurer to a school district represents a cost of collection of the school taxes, a reasonable time for billing school districts for the allocated bond premium charge would be such time after payment of the bond premium by the county treasurer, but prior to the end of the tax year of the school district for which the taxes are collected and safeguarded by the surety bond.

Such a construction of the statute affords ample time to the county treasurer to determine whether to bill school districts for the allocated share of the bond premium. When the tax year of the school district expires, the school district that is not billed by the county treasurer will know with certainty that the county treasurer has elected not to bill the school district for part of the cost of the surety bond premium.

Section 43 of Act 206, P.A. 1893, does not contemplate that the county treasurer can bill bond premium charges for previous tax years. Rather, unbilled bond premium charges are considered to be waived upon expiration of the tax year.

Section 44 of Act 206, P.A. 1893, as last amended by Act 275, P.A. 1964, provides in part as follows:

"\* \* \* When the bond of the treasurer, as provided in section 43, is furnished by a surety company, the cost of the bond shall be paid by the township from the contingent fund of the township. \* \* \*"

The Attorney General has ruled that the cost of such surety bond must be paid from the county general fund under section 43 of Act 206, P.A. 1893, *supra*, even though section 44 of that act provided otherwise in that the requirement of section 44 was repealed by implication and was not revived by subsequent amendment of section 44. O.A.G. 1959-60, Vol. II, page 162. Nor was such statutory requirement revived by the latest amendment to section 44 of Act 275, P.A. 1964, since the legislature was concerned with other portions of section 44, *supra*.

Therefore, it is the opinion of the Attorney General that a county treasurer is without authority to bill school districts in the year 1964 bond premium charges for the years 1959 through 1963.

FRANK J. KELLEY,  
*Attorney General.*

641201.5

**SCHOOL DISTRICTS:** Division of Territory.

Section 446 of the School Code of 1955, as amended, authorizes the division of both operating and non-operating school districts without bonded indebtedness and the attachment of the territory of such school districts to two or more school districts.

Where the school electors of a school district reject a proposed annexation of one school district to another school district, an election to divide the school district and to attach its territory to two or more school districts may be held within six months thereafter.

No. 4369

December 1, 1964.

Hon. Emil Lockwood  
State Senator  
106 Surrey Road  
St. Louis, Michigan

You advise that the electors of a certain fourth class school district operating elementary grades only have recently rejected a proposal to annex the district to a high school district. It is anticipated that the electors of the school district will be asked to pass upon the question of a division of the school district.

Based upon these facts you request an opinion on the following questions: