

after the school electors have rejected a proposed annexation of one school district to another school district.

FRANK J. KELLEY,
Attorney General.

641210.1

MICHIGAN STATE SAFETY COMMISSION: Membership of State Highway Commissioner and Superintendent of Public Instruction.

Effective either July 1, 1965, or upon the effective date of the resignation of the incumbent State Highway Commissioner at an earlier date, the chairman of the State Highway Commission, or such other person as may be designated by the Commission, shall replace the State Highway Commissioner as a member of the State Safety Commission.

Effective July 1, 1965, the Superintendent of Public Instruction appointed by the State Board of Education will become a member of the State Safety Commission.

No. 4391

December 10, 1964.

Mr. Gerald W. Shipman
Executive Secretary
Michigan State Safety Commission
Stevens T. Mason Building
Lansing 26, Michigan

Your letter cites Act No. 188, P.A. 1941,¹ which created the Michigan State Safety Commission. Among the members thereof as designated by that act are the State Highway Commissioner and the Superintendent of Public Instruction. You note that each of the present incumbents of those offices are elected officials, but that their respective successors will be appointed under the 1963 Constitution and no longer elected. The appointee in the Highway Department is to be titled "Director" rather than "Commissioner." You request my opinion in answer to the following questions:

"1. Should the Chairman of the State Highway Commission now be considered the ex-officio member of the State Safety Commission rather than the 'Director'?"

"2. Would the status of the Superintendent of Public Instruction be affected?"

"3. Is any legislation required to clarify the situation?"

The State Highway Commissioner is a statutory officer.² The present incumbent was elected at the biennial spring election of 1961 for a four-year term commencing on July 1, 1961.³

Article V, Section 28 of the 1963 Constitution established a State Highway Commission, and in part provides:

¹ C.L. 1948 § 256.561, et seq.; M.S.A. 1960 Rev. Vol. § 9.1704, et seq.

² The office of State Highway Commissioner was created by Section 2, Chapter V, of Act No. 283, P.A. 1909. C.L. 1948 § 225.2, M.S.A. 1958 Rev. Vol. § 9.202.

³ C.L.S. 1961 § 168.306, M.S.A. 1956 Rev. Vol. § 6.1306.

"The state highway commission shall appoint and may remove a state highway director, who shall be a competent highway engineer and administrator. He shall be the principal executive officer of the state highway department and shall be responsible for executing the policy of the state highway commission."

Article V, Section 28, is implemented by Act No. 286, P.A. 1964, being M.S.A. Cur. Mat. § 9.216(1), et seq. Section 5 of that act specifies:

"The director shall be appointed, and may be removed, by the affirmative vote of 3 members of the commission and shall serve at the pleasure of the commission. * * *"

Section 14 of Act No. 286 provides:

"The chairman or other person designated by the commission shall replace the state highway commissioner on all boards, commissions, authorities and agencies on which the commissioner holds membership by virtue of his office."

Certain sections of the act, including section 14, "shall take effect on July 1, 1965, or when the present state highway commissioner no longer holds his office, whichever occurs first," as provided in section 16 of the act.

It follows in answer to your first question that commencing upon July 1, 1965, or the effective date of the earlier resignation of Commissioner Mackie "[t]he chairman or other person designated by the commission shall replace the State Highway Commission" as a member of the State Safety Commission.

Article XI, Section 2 of the 1908 Constitution provided for the election at the biennial spring election of a Superintendent of Public Instruction. The present incumbent was elected at the biennial spring election of 1963 for a two-year term commencing on July 1, 1963.⁴

Article VIII, Section 3 of the 1963 Constitution provides for a State Board of Education and in part specifies:

"The state board of education shall appoint a superintendent of public instruction whose term of office shall be determined by the board. * * *"

The provisions of Article VIII with reference to the State Board of Education and Superintendent of Public Instruction were implemented by Act No. 287, P.A. 1964. Section 12 of that act provides:

"The superintendent of public instruction elected under the 1908 constitution shall serve as superintendent of public instruction until June 30, 1965."

This is in accord with Section 3 of the Schedule and Temporary Provisions of the Michigan Constitution of 1963, which provides that the Superintendent of Public Instruction elected in 1963 shall hold office for the balance of his term and until his successor is selected and qualified. Section 14 specifies:

⁴ C.L.S. 1961 §§ 168.306 and 168.309, M.S.A. 1956 Rev. Vol. §§ 6.1306 and 6.1309.

"After June 30, 1965, a reference in any law to the powers and duties of the superintendent of public instruction is deemed to be made to the state board unless the law names the superintendent as a member of another governmental agency or provides for an appeal to the state board of education from a decision of the superintendent, in which cases the reference is deemed to be made to the superintendent of public instruction appointed under the 1963 constitution. * * *"

It follows that the Superintendent of Public Instruction appointed by the State Board of Education as provided in the 1963 Constitution and Act No. 287, P.A. 1964, shall serve following June 30, 1965, as a member of the State Safety Commission.

No further legislation is presently required to provide for membership of the above designated officials upon the State Safety Commission.

FRANK J. KELLEY,
Attorney General.

641210.2

LEGISLATURE: One holding another public office or employment is disqualified from membership.

A person holding an office or position of employment under the federal or state government or in a political subdivision must resign his prior office or employment as a condition precedent to taking his seat. Such resignation should be effective by the date of commencement of his term in the legislature. Taking a leave of absence from his employment will not satisfy such constitutional requirement.

No. 4394

December 10, 1964.

Hon. Alfred A. Sheridan
State Representative-elect
8272 Weddel
Taylor, Michigan 48180

Receipt is acknowledged of your letter under date of November 17 requesting my opinion upon the following two questions:

"1. As an employee of Taylor Township, to be eligible to take my oath as a State Representative, when must I leave their employment to comply with the new constitution?"

"2. Can I be granted a leave of absence without any compensation and still comply with the provisions of the constitution?"

The constitutional provision in question, being Section 8 of Article IV of the 1963 Constitution, reads:

"No person holding any office, employment or position under the United States or this state or a political subdivision thereof, except notaries public and members of the armed forces reserve, may be a member of either house of the legislature."