

"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."

Included within the Address to the People with reference to this section is the following:

"The provisions of the new section will allow people holding offices or positions to run for the legislature, but since dual office-holding is prohibited a legislator-elect would be obliged to resign his prior office or employment as a condition precedent to taking his seat."

Your term as a member of the legislature will commence at 12:00 Noon on the first day of January, 1965. Section 2 of Article XI. The first regular session of the legislature will convene on January 13, 1965. Section 13 of Article IV. Historically, members of the legislature are sworn in and take their seats on the first day of the session.

Section 6 of Article V of the 1908 Constitution declared the incumbent of certain offices to be ineligible for election to or to be seated in the legislature. However, such provision did not purport to make one's employment the basis of ineligibility for such a seat. The latter provision was inserted in Section 8 of Article IV of the 1963 Constitution by amendment during the consideration thereof in the Constitutional Convention. For that reason, we do not have the benefit of prior determination of the questions presented either by the courts or by this office.

With respect to your first question, your employment with Taylor Township must be terminated not later than noon on January 13. However, inasmuch as your salary as a member of the legislature will commence as of January 1, it is suggested that in order to avoid any possible question to your right to such salary, that your employment be terminated prior to that date.

Where the question of taking a leave of absence has arisen in somewhat analogous situations, the ruling has been made that a leave of absence would not constitute a compliance with such a requirement. For example, in annotation in 68 A.L.R. 2d, p. 8, 59-60, entitled "Termination of coverage under group policy with regard to termination of employment" the general rule is stated:

"Occasionally, employees are granted so-called 'leaves of absence.' A leave of absence, as this term is generally understood, is a temporary release of the employee from his obligations under the contract of employment, usually for a specified time, and either with or without pay. By its very nature a leave of absence presupposes the continuance of the employer-employee relationship, and therefore it does not constitute a termination of employment within the meaning of the 'termination of employment' clause in a group policy. [citing cases]"

Similar ruling has been made by two former Attorneys General where the issue has arisen under a teachers' retirement act. O.A.G. 1941-42 No. 20086, pp. 189-190. O.A.G. 1945-46 No. 0-4473, pp. 645-46. In the first cited opinion the Attorney General stated:

"* * * A 'leave of absence' is synonymous with a permission by the employer to the employee to be absent from the place of employment. The very fact that permission is granted the employee to absent himself indicates a continuance of the relationship of employer and

employee. It seems obvious that had the relationship been terminated no such permission would need to be granted. * * *"

The 1965 legislature will be the first to be seated following the effective date of the 1963 Constitution. As above noted, the provisions of Section 8 of Article IV prohibiting the employment of members by the federal or state government or political subdivision thereof are new to that constitution. The foregoing sets forth the general rule as enunciated in court decisions involving somewhat analogous situations. I am of the opinion that those authorities are controlling and require answering of your second question in the negative.

FRANK J. KELLEY,
Attorney General.

641217.1

COUNTIES: Building Fund.

BOARD OF SUPERVISORS: Allocation of Miscellaneous Nontax Revenues.

SOCIAL WELFARE, COUNTY: Special Building Fund.

FUNDS: Pledged or Encumbered for Other Purposes.

County board of supervisors may allocate without limitation as to amount miscellaneous nontax revenues not otherwise pledged or encumbered for other purposes to a special building fund. Moneys so allocated may not be expended pursuant to Act 186 P.A. 1957 which relates only to unallocated funds.

Miscellaneous nontax revenues allocated to a special building fund may not be returned to other county operating funds or used to pay operating expenses.

Meaning of "miscellaneous nontax revenues" discussed.

The County Social Welfare Board is without authority to create a special building fund or to allocate reimbursements received from indigents or from responsible relatives to any such fund.

No. 4377

December 17, 1964.

Hon. Billie S. Farnum
Auditor General
Capitol Building
Lansing, Michigan

You have requested the opinion of the Attorney General on six questions to be hereafter stated and answered but which, in the main, relate to the limitations, if any, on the power of the county board of supervisors to authorize or require the allocation or transfer of miscellaneous county revenues derived from nontax sources to a special fund, sometimes designated as the building or improvement fund. You refer to a number of statutes, to be discussed, and request an interpretation of their application to your questions.

The legislative power which includes the power to enact the laws is reposed by the Michigan Constitution in the legislature. Unlike the Federal