

ing without a license in possession, driving in violation of the restrictions imposed on a license, or, driving while license has been denied, suspended or revoked, as provided for under Sections 301, 311, 312, 904 and 905 of Chapters III and VIII of Act 300, P.A. 1949, as amended, should be forwarded under the provisions of Section 732, as amended, of said act to the division of driver and vehicle services.

Your second question is whether the division of driver and vehicle services is required to assess and record points for these convictions, under the provisions of Section 320a, as amended, of said act.

Section 320a, as amended,⁸ reads in part:

"(1) The division of driver and vehicle services, within 10 days after the receipt of a properly prepared abstract, shall record the date of conviction and the number of points for each conviction based on the following formula:

* * *

"(i) All other moving violations pertaining to the operation of motor vehicles reported under this section 2 points."

The division of driver and vehicle services is required to assess and record points for these convictions under the provisions of Section 320a, as amended, of the Michigan Vehicle Code.⁹

FRANK J. KELLEY,
Attorney General.

650219.1

SCHOOLS: Districts – Power to fix regular elections.

The biennial spring state election having been abolished, the board of education of a third class school district, which had fixed its regular elections, to be held biennially at the same time as the biennial spring state elections, is without power to fix its regular election at the same time as the city election to be held in April of 1966.

No. 4411

February 19, 1965.

Hon. Stanley F. Rozycki
State Senator
Box 240
Lansing, Michigan

You advise that the board of education of a third class school district had previously determined, in accordance with Sec. 107 of the School Code of 1955, to hold elections of members of the board of education at the same time that the biennial spring state election was held in the odd numbered years. You indicate further that the biennial spring state election has been abolished. Based upon these facts you ask the following question:

⁸ Section 320a was last amended by Act 34, P.A. 1963; M.S.A. 1963 Cum. Supp. § 9.2020(1).

⁹ O.A.G. No. 4302 issued to you April 9, 1964.

Can the board of education of a school district hold its election in April 1966 at the time of the general city election?

Act 269, P.A. 1955, as amended, being C.L.S. 1961, § 340.1 et seq., M.S.A. 1959 Rev. Vol. §15.3001 et seq., is known as the School Code of 1955. Section 107 of the School Code of 1955 provides in pertinent part as follows:

"In each school district of the third class, the board shall consist of 7 members elected from the district at large and their terms arranged so that 2 of those elected members shall serve for 1 year, 2 for 2 years, 2 for 3 years, and 1 for 4 years; thereafter, at the next school election immediately preceding the expiration of the respective terms of these officers, their successors shall be elected to serve for terms of 4 years and until their successors are elected and qualified. When any school district of the fourth class becomes a school district of the third class by a vote of the electors, additional members shall be elected to the board of education as provided under section 334 of this act. Any school district of the third class now or hereafter created may hold its election biennially at the same time that the city or village election or at the same time as the biennial spring state election is held. The board shall determine whether the district shall hold its election at the time of the city or village election or at the time of the biennial spring state election. If the school district holds its election at the same time of the city or village election or at the same time of the biennial spring state election, the term of office shall be for 6 years. Two of the members of the board shall serve for 2 years, 2 for 4 years, and 3 for 6 years. At the next school election immediately preceding the expiration of the respective terms of these officers, their successors shall be elected to serve for terms of 6 years and until their successors are elected and qualified. In case the board of any school district in which the members of the board are elected for a 6 year term of office, by a majority vote, provides that the term of office of members of the board shall be for 4 years, then in any such school district, notwithstanding the provisions of this section to the contrary, the term of office of members of the board shall be for 4 years. The present members of the board shall serve the balance of their respective unexpired terms. The board, in determining that members of the board shall serve for 4 year terms, shall provide in the resolution that elections thereafter shall be held on the second Monday in June, as provided in section 108 of this act, and shall provide for a system of rotation of terms of office which is as equal as may be and shall fairly adjust the length of terms and the number of members to be elected annually until the rotation is established. After the rotation is established, but not more than 8 years after the adoption of the resolution, not more than 2 members shall be elected in any one year to fill vacancies occurring by expiration of terms.

The regular annual school election in each school district of the third class is required to be held on the second Monday in June, as set forth in Sec. 108 of the School Code of 1955.

The statutory term "biennial spring election," as originally enacted in Act 116, P.A. 1954, known as the Michigan Election Law, being C.L.S. 1961, § 168.4; M.S.A. 1956 Rev. Vol. § 6.1004, was defined to mean the election to be held in the state on the first Monday in April in every odd numbered year.

Reading Sections 107 and 108 of the School Code of 1955, *supra*, together, boards of education of third class school districts are required to hold regular school elections annually on the second Monday in June to elect members of the board of education for terms of four years unless the board of education votes to hold elections biennially, either at the same time as the biennial spring state election or at the same time of the city or village election. Should the board of education approve biennial elections, members of the board of education are to be elected for six year terms. By a majority vote of the members of a third class board of education terms of members of the board of education may thereafter be reduced from six years to four years and the elections are required to be held annually.

Thus the board of education of the third class school district to which you make reference fixed their regular election to be held on the first Monday in April of every odd numbered year.

The people have proscribed a regular biennial spring election to be held in the state on the first Monday in April in every odd numbered year through Article II, Sec. 5 of the Michigan Constitution of 1963, which requires that except for special elections to fill vacancies all elections for state offices shall be held on the first Tuesday after the first Monday in November in each even numbered year or on such other date as members of the Congress of the United States are regularly elected.

The legislature has amended Sec. 4 of Act 116, P.A. 1954 by means of Act 3, P.A. 1963, Second Extra Session, to define the term "biennial spring election," the term "spring election" or other similar term when used in city or village charters, unless otherwise defined therein, to mean the local election to be held on the first Monday in April in every odd numbered year.

A board of education of the third class school district which has scheduled its regular elections biennially to be held at the same time as the biennial spring state election cannot hold its election on the first Monday in April of 1965 because no biennial spring state election is to be held at that time. However, such board of education, by majority vote of its members, may provide that the terms of office of the members of the board shall be for four years, in accordance with Sec. 107 of the School Code of 1955, *supra*, with its regular elections to be held on the second Monday in June annually, in accordance with Sec. 108 of the School Code of 1955, so that the next regular election shall be held on the second Monday in June of 1965.

Boards of education have only such powers as the legislature expressly or by implication, confers upon them. *Jacox v. Board of Education of Van Buren Consolidated School District*, 293 Mich. 126 (1940). In the School Code of 1955 the legislature has proscribed the powers of boards of education of school districts of the third class to fix the date of regular elections

within the district. Such elections must be held annually or biennially, as determined by the board of education. The statutory provision cannot be enlarged by implication to allow an election to be held triennially. See *Taylor v. Michigan Public Utilities Commission*, 217 Mich. 400 (1922).

There appears to be a void in Sec. 107 of the School Code of 1955 because the Constitution bars a biennial spring state election. This matter should be brought to the attention of the Michigan legislature for appropriate action.

Therefore, it is the opinion of the Attorney General that a board of education of a third class school district, which has fixed its regular biennial elections to be held at the same time as the biennial spring state election, is without power to hold its regular elections at the same time as the city elections in April of 1966.

FRANK J. KELLEY,
Attorney General.

650222.2

COUNTIES: Tax Allocation Board.
TAXATION: County Tax Allocation Board.

The county tax allocation board must be composed of six members.

No. 4372

February 22, 1965.

Dr. Lynn M. Bartlett
Superintendent of Public Instruction
Lansing, Michigan

You have requested my opinion on the following question:

"Does Section 5 of Act 62, Public Acts of 1933, as last amended by Act No. 5, Public Acts of 1964, require a county tax allocation board of six members?"

Act 62, Public Acts of 1933, as amended, being C.L. 1948 § 211.201 et seq.; M.S.A. 1960 Rev. Vol. § 7.61 et seq., is known as the property tax limitation act.

Section 5, as last amended by Act 5, P.A. 1964, creates a county tax allocation board which shall be composed of

"the county treasurer; the chairman of the board of county auditors if there be such a board, and if not, the chairman of the finance or ways and means committee of the board of supervisors of the county; the intermediate school district superintendent or his representative; 1 member of a school board of a school district in the county maintaining 12 grades of school, who shall be selected by the judge or judges of probate of the county, except that in counties containing 1 or more municipal corporations having a population of 10,000 or more, such member shall be a resident of the county and selected by the board of education of the constituent school district, not an intermediate school district, at least ½ of the area of which lies in the county, and