first Monday in June which is the final date for the county tax allocation board to make an order approving a maximum tax rate for each township.

When it is considered that many townships which request a millage allocation have abolished their annual meeting, I think that this delay and the resultant operation of the townships for more than three months on a budget which has not had the constitutionally required public hearing does do violence to the constitutional requirement of a public hearing prior to budget adoption.

It is therefore my opinion that Article VII, Section 32 of the Michigan Constitution of 1963, commands the holding of a public hearing prior to the time that a township adopts its budget. Section 3 of Act 43, P.A. 1963, 2nd Ex. Sess., supra, does not properly implement Article VII, Section 32 of the Michigan Constitution of 1963. This matter should be brought to the attention of the legislature for conforming implementation of the constitutional section.

FRANK J. KELLEY,
Attorney General.

650323.2

FIRE DEPARTMENTS: Integrated Force — Hours of Employment.

The provisions of Act 125, P.A. 1925, apply, where otherwise applicable, to those municipal employees who are engaged in fire fighting or who are subject to the hazards thereof, although the fire fighting services are incorporated into a department known by a name other than "fire department" or integrated with the police department and called a department of public safety or police-fire department.

No. 4429 March 23, 1965.

Honorable E. D. O'Brien
State Representative
The Capitol
Lansing, Michigan

You have submitted the following question for our analysis and disposition:

> "Would the combination of a city fire and police departments into an integrated force under which employees (sometimes called 'public safety officers') perform the customary duties of both firemen and policemen and usually under common supervision (sometimes called a 'department of public safety' or 'police-fire department') be controlled by the provisions of Act 125, P.A. 1925, as amended [C.L. '48, § 123.841; M.S.A. 1958 Rev. Vol. § 5.3331, et seq.]?"

Act 125, P.A. 1925, Sections 1 and 2, provide:

> "Section 1. It shall be unlawful for any municipality, or any officer or employee thereof, in municipalities which maintain or may

hereafter maintain an organized paid or part paid fire department, to require any person in the employ of the fire department of such municipality *who is engaged in fire fighting or subject to the hazards thereof* to be on duty in such employment more than 24 hours, or to be off duty less than 24 consecutive hours out of any 48 hour period: Provided, That all persons in the employ of any organized paid or part paid fire department *who are engaged in fire fighting or subject to the hazards thereof* shall be entitled to an additional 24 consecutive hours off duty in every 16 day period, thereby requiring firemen to work not more than an average of 73½ hours per week. (emphasis supplied)

"Section 2. The provisions of section 1 shall not apply

(a) To the chief officer or the assistant chief officer in command of the fire department of a municipality;

(b) To employees of a fire department who are employed subject to call;

(c) To the members or employees of a fire department when required to remain on duty by the chief officer of such department, his aids or assistants, in cases of public necessity arising from great conflagration, riot, flood, epidemic of pestilence or disease, necessary absence of regularly employed men due to military service, or for disciplinary measures; nor

(d) To the members of any volunteer fire department."

The underlined portion of Section 1, *supra,* was added by the legislature in the adoption of Act 335, P.A. 1947. A reading of Section 1, prior to the 1947 amendment, would lead to the conclusion that the Act prior to the effective date of the amendment applied to "any person in the employ of the fire department of such municipality" that maintains an organized paid or part paid fire department.

The Attorney General considered Section 1 in an opinion of this office dated September 3, 1942,[1] and whether Act 125 was applicable to only those employees directly engaged in fire fighting. The opinion conceded that the language "all persons in the employ of any * * * fire department" may conceivably be subject to more than one interpretation. However, the opinion concluded that the limits on work hours set forth in the Act applied to employees of the fire department other than fire fighters.

The amendatory language enacted in 1947 obviously restricted the scope of the statute. Thereafter only those "engaged in fire fighting or subject to the hazards thereof" would enjoy the benefits of Act 125. Thus, the determining characteristic is not whether a person is in the employ of a fire department but whether he is one engaged in fire fighting or subject to the hazards thereof.

Your question suggests that the purpose of the statute could be circumvented if it could be argued that the statutory purpose extended only to fire fighters employed by a "fire department" as such. Circumvention then could be accomplished by merely renaming the fire department. Integrating

[1] O.A.G. 1943-44, No. 24485, page 76.

the police and fire departments and naming the combined unit a public service department could be considered a more elaborate avoidance of the Act. Inordinate attention, however, to the strict letter of the law should be avoided in order to permit the spirit and purpose of the Act to prevail. *Ballinger v. Smith,* 328 Mich. 23. Clearly, the salutary effects of Act 125, *supra,* are intended by the legislature to benefit those employees of an organized paid or part paid fire department who are engaged in fire fighting or subject to the hazards thereof.

The provisions of Section 2(b) of Act 125, *supra,* also deserve a comment in order to avoid any conflict with the foregoing. That subsection reads as follows:

> "The provisions of section 1 shall not apply
>
> (a) * * *
>
> (b) To employees of a fire department who are employed subject to call;"

In 1945 the Attorney General ruled that this subsection applies to persons who do not work regularly as firemen and who receive no regular compensation therefor, but who are employed subject to some agreement with the municipality that they will hold themselves in readiness to answer fire calls when needed, to be compensated only for the service rendered; the subsection does not apply to firemen regularly employed by a municipality even though they are subject to call when off duty.[2]

In summation, it is the opinion of this office that the terms of Act 125, P.A. 1925, apply, where otherwise applicable, to those municipal employees who are engaged in fire fighting or who are subject to the hazards thereof, although the fire fighting services are incorporated into a department known by a name other than "fire department" or integrated with the police department and called a department of public safety or police-fire department.

FRANK J. KELLEY,
Attorney General.

650331.1

CONSTITUTIONAL LAW: Powers of Legislature.
Procedure to invoke provisions of the Constitution.
TAXATION: Power to classify taxpayers for income tax purposes.

Under provisions of §§ 3 and 7, Art. IX, Const. 1963, the legislature can, in enacting an income tax statute, classify taxpayers as natural persons,

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[2] O.A.G. 1945-46, August 21, 1945, No. 0-3853, page 438.