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**CONSTITUTIONAL LAW:** Impairment of bond contract.  
**TAXATION:** Assessment at proportion of true cash value.  
**ASSESSOR:** Duty to assess property.  
**MUNICIPAL BONDS:** Impairment of bond contract.

House Bill No. 2209, if amended as proposed in this opinion, would conform to the Michigan Constitution of 1963.

The Constitution requires that the legislature establish the proportion of true cash value not exceeding fifty per cent at which property shall be uniformly assessed subsequent to January 1, 1966.

House Bill No. 2209, if amended as proposed in this opinion, would not jeopardize any outstanding limited tax school bonds.

The Constitution makes it mandatory for an assessing officer to assess property at the proportion of true cash value established by the legislature pursuant to Article IX, Section 3, Michigan Constitution of 1963.

No. 4441

May 28, 1965.

Hon. Harry A. DeMaso  
House of Representatives  
State Capitol  
Lansing, Michigan

Section 27 of the General Property Tax Law<sup>1</sup> defines the words "cash value". House Bill No. 2209, a proposed amendment of said section, seeks to provide that for ad valorem tax purposes property shall be assessed at 50%<sup>2</sup> of its true cash value. House Bill No. 2209, before the House on third reading,<sup>3</sup> would amend Section 27 to read as follows:

"The words 'cash value', whenever used in this act, shall be held to mean the usual selling price at the place where the property to which the term is applied shall be at the time of assessment, being the price which could be obtained therefor at private sale, and not at forced or auction sale. Any sale or other disposition by the state or any agency or political subdivision thereof heretofore or hereafter made of lands acquired for delinquent taxes or any appraisal made in connection therewith shall not be considered as controlling evidence of true cash

<sup>1</sup> Section 27 of Act No. 206, P.A. 1893, as last amended by Act No. 275, P.A. 1964, M.S.A. Curr. Mat., § 7.27.

<sup>2</sup> The relation of one part to the whole is called a proportion; when expressed in terms of hundredths, it is called a percentage or per cent. Article IX, § 3, Michigan Constitution of 1963, and House Bill No. 2209 use the terms "proportion" and "per cent" or "percentage" interchangeably.

<sup>3</sup> House Bill No. 2209 was considered by the Committee of the Whole on April 22, 1965. The Committee recommended the adoption of an amendment to the House Bill and the amendment was adopted and the bill was placed on the order of third reading of bills, (H.J. No. 63, p. 1117). There are presently pending before the House on third reading several proposed amendments, one of which would require that property shall be assessed at 40% of its true cash value. These amendments were proposed on May 6, 1965, but were not voted on. (H.J. No. 67, p. 1214) See also proposed amendments to House Bill No. 2209 in H.J. No. 81, p. 1733.

value for assessment purposes. In determining the value the assessor shall also consider the advantages and disadvantages of location, quality of soil, quantity and value of standing timber, water power and privileges, mines, minerals, quarries or other valuable deposits known to be available therein and their value.

"Notwithstanding any other provisions of law, property shall be assessed at 50% of its true cash value pursuant to legislative action in accordance with article 9, section 3 of the constitution."

Article IX, § 3, Constitution of 1963, provides in part:

"The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not, after January 1, 1966, exceed 50 percent; and for a system of equalization of assessments."

By letter dated May 6, 1965, you request my opinion upon the following questions:

- "(1) Is House Bill No. 2209 as written in conformity with the language of Article 9, Section 3?
- "(2) Must the Legislature establish a proportion (percentage) of true cash value at which property shall be assessed for property taxes?
- "(3) If bonds have been issued based upon a 50% assessment by a school district, would a bond issue be jeopardized by a lower percentage of assessment?
- "(4) Does the Constitution make it mandatory that an assessing officer assess at the percentage established by the legislature or can he assess at a lower figure (percentage) and then through the process of equalization be equalized to the percentage established by the legislature?"

Your first and second questions will be considered together.

The portion of Art. IX, § 3, Constitution of 1963, which has been quoted above, constitutes a revision of Art. X, §§ 3, 7 and 8, Constitution of 1908. Article X, § 3 of the 1908 Constitution reads in pertinent part as follows:

"The legislature shall provide by law a uniform rule of taxation, \* \* \* and taxes shall be levied on such property as shall be prescribed by law:"

Section 7 of Art. X, Constitution of 1908, required that

"All assessments hereafter authorized shall be on property at its cash value."

Section 8 of Art. X, Constitution of 1908, provided for the equalization of assessments on all taxable property in the following language:

"In the year 1911, every fifth year thereafter and at such other

times as the legislature may direct, the legislature shall provide by law for an equalization of assessments by a state board, \* \* \*."

Article X, § 3, Constitution of 1908, is substantially identical to Art. XIV, § 11, Constitution of 1850, as is Art. X, § 8, Constitution of 1908 to Art. XIV, § 13, Constitution of 1850. The language of Art. X, § 7, Constitution of 1908, is identical with Art. XIV, § 12, Constitution of 1850.

Thus, the Michigan constitutions of 1850, 1908 and 1963 have provided that assessments of property be uniform and that there be an equalization of assessments. The Michigan constitutions of 1850 and 1908 further provided that property be assessed at its true cash value. The 1963 Constitution provides for uniform assessment at a proportion of true cash value.

Uniform taxation requires substantial identity of the tax base as well as uniformity in the rate of taxation. Consequently, the uniformity rule requires that the same standard of value be used in the assessment of all taxable property within a taxing district and that such identical standard of value be subjected to the same rate of taxation.

*Huron-Clinton Metropolitan Authority v. Boards of Supervisors of Five Counties*, 304 Mich. 328.

*Titus v. State Tax Commission*, 374 Mich. 476.

Pursuant to the provisions of Art. XIV, § 11, Constitution of 1850,<sup>4</sup> directing it to "provide a uniform rule of taxation", the legislature in 1853 enacted the first definition of the term "cash value".<sup>5</sup> "Cash value", which was to become the uniform standard of assessment or tax base of individual properties, was defined in terms of its usual selling price. This definition of cash value, while amended many times since 1853, is still based upon the standard of "usual selling price" at the time and place of assessment.

House Bill No. 2209 in its form before the House on third reading,<sup>6</sup> retains such definition of cash value. In addition, it provides for assessment of property at 50% of its true cash value.

Article IX, § 3, Constitution of 1963, specifies that

"The legislature shall provide \* \* \* the proportion of true cash value at which such property shall be uniformly assessed, which shall not, after January 1, 1966, exceed 50 percent; \* \* \*." [Emphasis supplied]

The above quoted language conveys the clear mandate to require legislative establishment of a uniform assessment level at any percentage not exceeding 50% of true cash value. The Constitutional Convention Record supports such interpretation. Mr. Brake, Chairman of the Committee on Finance and Taxation, submitted the following reasons in support of limiting assessments to a proportion established by the legislature not to exceed 50% of true cash value:

<sup>4</sup> The proviso was added to § 11, Art. XIV, Constitution of 1850, pursuant to Joint Resolution No. 1, Extra Session of 1900; ratified by the people at the November election of 1900.

<sup>5</sup> Section 13 of Act No. 86, Laws of Michigan, 1853.

<sup>6</sup> See Footnote 3.

"To repeat, the important constitutional objective is uniformity of assessment, regardless of the level or standard at which property is commonly assessed. Permitting the legislature to fix the standard offers the possibility of moving to a more realistic standard such as, for example, the 50 per cent of cash value currently used by the state tax commission. On this basis actual uniformity could be achieved and a taxpayer aggrieved by an assessment over the level prescribed by law could obtain relief. A majority of the committee believes that the standard set by the legislature should not exceed 50 per cent. Recognizing that some jurisdictions currently assess some property in excess of 50 per cent, the committee has postponed the effective date of this limitation until 1966.

"Another advantage of a standard of value fixed by law is the relative freedom with which the legislature could change the standard to reflect changes in the general price structure. \* \* \*" [Official Record, Constitutional Convention, 1961, Vol. I, p. 854]

Efforts were made in the Constitutional Convention to remove the 50% limitation on assessments at true cash value from Art. IX, § 3. On first reading, such an amendment was offered to Committee Proposal 51, which subsequently became Art. IX, § 3, by striking the limitation. The amendment was not adopted. [Official Record, Constitutional Convention, Vol. I, p. 877]: When the Committee of the Whole arose, another effort was made to amend Committee Proposal 51 to strike the 50% limitation and the amendment failed. [Official Record, Constitutional Convention, Vol. I, p. 907] On second reading, an attempt was made to amend Committee Proposal 51 so as to empower the legislature to exceed the 50% limitation by law. This amendment was not adopted. [Official Record, Constitutional Convention, Vol. II, p. 2642]

Testing House Bill No. 2209 by the provisions of Art. IX, § 3 of the Michigan Constitution of 1963, it is the opinion of the Attorney General, in answer to your first and second questions, that House Bill No. 2209 in its form before the House on third reading conforms with Art. IX, § 3 of the Michigan Constitution of 1963. The legislature is required to establish a proportion of true cash value at which property shall be uniformly assessed and such proportion cannot exceed 50% as required by Art. IX, § 3.

In answer to your third question, consideration should be given to Art. X, § 7, of the Constitution of 1908, which provided that

"All assessments hereafter authorized shall be on property at its cash value."

The Supreme Court in the recent cases of

*Pavilion Apartments, Inc. v. State Tax Commission*, 373 Mich. 601, and *Titus v. State Tax Commission*, *supra*, 374 Mich. 476, recognized that assessments, under the facts of those cases, were not at the constitutionally prescribed true cash value but at a proportion thereof. The Constitutional Convention Record, as well as the Convention's Address

to the People, noted that assessing units were assessing property at various percentages of true cash value and particularly noted that "some jurisdictions currently assess some property in excess of 50% \* \* \*."<sup>7</sup>

Limited tax bonds are supported in part by the aggregate assessed valuations of the governmental unit issuing the bonds. Assuming that House Bill No. 2209 is enacted in the form in which it appears on third reading in the House, properties must be assessed in accordance with its provisions. Such assessments would be applicable to properties located in governmental units having issued limited tax bonds and subject to such outstanding limited tax bonds. In the event that the assessment by the assessor in accordance with the provisions of House Bill No. 2209 would serve to reduce the assessment on such property applicable at the time of the issuance of limited tax bonds, such reduced assessment could not be a basis for a corresponding reduction in the levy of taxes for the payment of principal and interest on limited tax bonds on such property without impairing the bond contract under which the bonds were issued.

While Art. IX, § 3 of the Michigan Constitution of 1963 imposes a duty upon the legislature to determine the assessment of property at a true cash value in a proportion not to exceed 50%, the people have also provided in Art. I, § 10, of the Michigan Constitution of 1963 that no bill shall be enacted impairing the obligation of contract. It must follow that the legislature is not at liberty to take any action which would impair the obligation of any contract hitherto incurred by any governmental unit, including counties, townships, community college districts or school districts, pursuant to authorization of the legislature.

Article I, § 10 of the United States Constitution prohibits the states from enactment of any law impairing the obligation of contracts. It protects bondholders against impairment of their bond contract.

*Board of Education of City of Lincoln Park v. Board of Education of City of Detroit*, 245 Mich. 441

Assessments made by the assessor in accordance with House Bill No. 2209 on property located in a governmental unit having issued limited tax bonds and subject to tax levy for the payment of principal and interest on outstanding tax limited bonds which would exceed the assessed valuations of such properties prevailing at the time of the issuance of the limited tax bonds would not violate any constitutional provision and would be effective.

In order to protect the credit of the state against the possibility that actions taken by an assessor in the discharge of his duties under the provisions of House Bill No. 2209 would result in a decrease in assessments on property from those prevailing at the time limited tax bonds were issued, House Bill No. 2209 should be amended to bring its provisions

<sup>7</sup> Official Record, Constitutional Convention, 1961, Vol. I, p. 854, and comments relative to Art. IX, § 3, in the Address to the People, Official Record, Constitutional Convention, 1961, Vol. II, p. 3398.

into conformity with Art. I, § 10 of the Michigan Constitution of 1963 and Art. I, § 10 of the United States Constitution. Amendments to bring House Bill No. 2209 into such conformity have been proposed and have been printed in House Journal 81, p. 1733.

If House Bill No. 2209 is so amended, it is the opinion of the Attorney General that House Bill No. 2209 would be in accord with both the Federal and State constitutions and limited tax bonds that have been issued based upon a "true cash valuation" by a school district would not be jeopardized by a lower percentage of assessment required for other purposes in that the lower percentage of assessed valuation would not be applicable for levy of taxes in payment of principal and interest on outstanding limited tax bonds.

It is clear that unlimited tax bonds would not be affected in any way by either an increase or a decrease in the assessed valuations of properties subject to such unlimited tax bonds. The duty to levy sufficient taxes to pay principal and interest on such unlimited tax bonds is without limit under the bond contract and assessed valuation cannot affect the obligation to levy taxes without limit.

In answer to your fourth question, the people have mandated in Art. IX, § 3 that the property subject to ad valorem taxation shall be assessed at the proportion of true cash value established by the legislature which shall not exceed 50% after January 1, 1966. House Bill No. 2209 purports to make the determination as to the proportion of true cash value which shall apply.

If House Bill No. 2209 is enacted, the legislature shall have imposed a duty upon assessors to assess property in accordance with the provisions of the bill. So enacted the statute must be obeyed. To do otherwise is in open violation of the oath which the assessor has taken to perform faithfully his duties.

*Wattles v. The City of Lapeer*, 40 Mich. 625

The listing of property on assessment rolls has been described as clerical, but the determination of its value is judicial requiring the judgment of the assessor under his oath of office.

*Woodman and Washburne v. The Auditor General, the Treasurer of Mackinac County and the Supervisor of Moran Township*, 52 Mich. 28

It is abundantly clear that the Constitution makes it mandatory for an assessing officer to assess property at the proportion of true cash value established by the legislature in accordance with Art. IX, § 3. There is no basis for holding that he can assess at a lower figure and then rely upon a process of equalization to fulfill duties imposed on him by law.

While your request does not directly raise the issue, I respectfully invite the attention of the legislature to the existing provisions of Act No. 44, P.A. 1911, as amended,<sup>8</sup> which created the State Board of

<sup>8</sup> C.L.S. 1961, § 209.1, et seq., and subsequent amendatory acts; M.S.A. 1960 Rev. Vol., 1963 Cum. Supp. and Curr. Mat., § 7.601, et seq.

Equalization, and Act No. 292, P.A. 1909, as amended, which added § 34 to Act No. 206, P.A. 1893, the General Property Tax Act.<sup>9</sup> Under the existing provisions of these statutes, state and county equalization, respectively, are to be determined on the basis of true cash value.<sup>10</sup> Necessary revision of these statutes is indicated to bring the method of state and county equalization into conformity with the proportion of true cash value ultimately established by the legislature in accordance with Art. IX, § 3 of the Michigan Constitution of 1963.

FRANK J. KELLEY,  
*Attorney General.*

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**CONSTITUTIONAL LAW:** Heads of principal departments.

**LEGISLATURE:** Designation of boards and commissions as heads of principal departments.

Except as otherwise provided in the Constitution of 1963, the legislature in allocating by law all executive and administrative offices, agencies and instrumentalities of the executive branch of state government, except for the office of governor and lieutenant governor and the governing bodies of institutions of higher education provided for in the Constitution, among and within not more than 20 principal departments, may create principal departments to be headed by single executives, boards or commissions as the legislature shall prescribe.

No. 4446

June 11, 1965.

Representative E. D. O'Brien  
House of Representatives  
Lansing, Michigan  
and  
Senator William Romano  
The Senate  
Lansing, Michigan

By joint request you have asked the opinion of the Attorney General on the following question submitted by you:

"Pursuant to the constitutional mandate in Section 2, Article V, that the legislature shall allocate by law all executive and administrative offices, agencies and instrumentalities of the executive branch among and within not more than 20 principal departments, may the legisla-

<sup>9</sup> C.L. '48, and C.L.S. 1961, § 211.1, et seq.; M.S.A. 1960 Rev. Vol., 1963 Cum. Supp. and Curr. Mat., § 7.1, et seq. Section 34 was last amended by Act No. 275, P.A. 1964.

<sup>10</sup> In *School District No. 9, Pittsfield Township, Washtenaw County v. Washtenaw County Board of Supervisors*, 341 Mich. 388, 406, the Supreme Court held "that the term 'assessed valuation,' as used in the tax limitation amendment, 'means the local assessment as approved or changed and corrected through the statutory process of county and State equalization.'"