

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.⁹ Under the existing provisions of these statutes, state and county equalization, respectively, are to be determined on the basis of true cash value.¹⁰ 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-

⁹ 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.

¹⁰ 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.'"

ture create principal departments headed by boards or commissions excepting those specifically designated in the constitution?"

In your letter you give the following explanation as the basis for your inquiry:

"During the time the Legislature has been carrying out its constitutional mandate of initially allocating all executive and administrative offices, agencies and instrumentalities of the executive branch of state government, among and within not more than 20 principal departments (Article V, Section 2), and during the two year period granted the legislature to accomplish this mandate (Schedule and Temporary Provisions, Section 12), arguments persist that it was the clear intent of the framers of the State Constitution that the heads of the principal departments created under Article V, Section 2 of the Constitution, were to be single executives unless otherwise specifically designated by the Constitution."

Article V, Section 2, Constitution of 1963, to the extent pertinent, is as follows:

"All executive and administrative offices, agencies and instrumentalities of the executive branch of state government and their respective functions, powers and duties, except for the office of governor and lieutenant governor and the governing bodies of institutions of higher education provided for in this constitution, shall be allocated by law among and within not more than 20 principal departments. They shall be grouped as far as practicable according to major purposes."

Section 12 of the Schedule and Temporary Provisions reads:

"The initial allocation of departments by law pursuant to Section 2 of Article V of this constitution, shall be completed within two years after the effective date of this constitution. If such allocation shall not have been completed within such period, the governor, within one year thereafter, by executive order, shall make the initial allocation."

Article V, Section 3 of the Constitution provides in its entirety:

"The head of each principal department shall be a single executive unless otherwise provided in this constitution or by law. The single executives heading principal departments shall include a secretary of state, a state treasurer and an attorney general. When a single executive is the head of principal department, unless elected or appointed as otherwise provided in this constitution, he shall be appointed by the governor by and with the advice and consent of the senate and he shall serve at the pleasure of the governor.

"When a board or commission is at the head of a principal department, unless elected or appointed as otherwise provided in this constitution, the members thereof shall be appointed by the governor by and with the advice and consent of the senate. The term of office

and procedure for removal of such members shall be as prescribed in this constitution or by law.

"Terms of office of any board or commission created or enlarged after the effective date of this constitution shall not exceed four years except as otherwise authorized in this constitution. The terms of office of existing boards and commissions which are longer than four years shall not be further extended except as provided in this constitution."

Also pertinent is Article V, Section 9 of the Constitution which reads:

"Single executives heading principal departments and the chief executive officers of principal departments headed by boards or commissions shall keep their offices at the seat of government except as otherwise provided by law, superintend them in person and perform duties prescribed by law."

The portions of the Address to the People pertinent to Sections 2, 3 and 9 of Article V and Section 12 of the Schedule contain no information having a direct bearing on the question asked by you. However, help can be found by a resort to the discussion of these sections by the delegates in the Constitutional Convention of 1961.¹ Although amended in some respects during the course of the deliberations, Article V, Sections 2, 3 and 9 and Section 12 of the Schedule originated in the Constitutional Convention as a part of Committee Proposal 71.² In his statement of explanation and reasons in support of Committee Proposal 71, Delegate Martin, Chairman of the Committee on Executive Branch, made the following statements:

"The proposal provides that the head of each principal department shall be a single executive unless otherwise provided by the constitution or by statute. Three officials are given constitutional status as single executives appointed as heads of principal executive departments.

¹ Under the authority of *Burdick v. Secretary of State*, 373 Mich. 578, both the Address to the People and the Official Record of the Constitutional Convention may be considered and examined in interpreting and construing constitutional provisions.

² Official Record, Constitutional Convention 1961, page 1766. Committee Proposal 71 was divided into separately-lettered sections.

The provision which became the 1st paragraph of Art. V, Sec. 2 appeared as Sec. b, paragraph 2 of Committee Proposal 71.

The provision which became the 2nd paragraph of Art. V, Sec. 2 appeared as Sec. b, paragraph 4 of Committee Proposal 71.

The provision which became the 1st paragraph of Art. V, Sec. 3 appeared as Sec. b, paragraph 5 of Committee Proposal 71.

The provision which became the 2nd paragraph of Art. V, Sec. 3 appeared as Sec. b, paragraph 6 of Committee Proposal 71.

The provision which appeared as the last paragraph of Art. V, Sec. 3 was added by amendment in the Committee of the Whole, Official Record, page 1871 et seq.

The provision which became Art. V, Sec. 9 appeared as Sec. c of Committee Proposal 71.

The provision which became Sec. 12 of the Schedule appeared as Sec. b, paragraph 3 of Committee Proposal 71.

These are the secretary of state, the state treasurer and the attorney general.

"The legislature would have the choice under the proposed language of providing that principal departments be headed either by a single executive who is appointed or by an appointed board or commission. It would not be possible to provide by statute for an elected department head, as is now the case with the state highway commissioner.

"The proposal retains a requirement for senate review of gubernatorial appointments, both for single executives who are department heads and for members of boards or commissions. * * *.

"In setting forth tenure and removal provisions, the proposal distinguishes between departments with single heads appointed by the governor and those headed by boards or commissions. A single executive appointed as the head of a department is to serve at the pleasure of the governor, but terms of office and conditions for removal of board and commission members may be set by law or specified in the constitution itself, as in the case of the civil service commission. * * *." (Official Record, page 1768)

During the course of debates in the Committee of the Whole the following colloquy occurred:

"MR. JONES: Well, now, as I see it, many of the existing boards and commissions could be consolidated and new names attached to these departments. Under this type of setup, wouldn't it be possible, then, that these newly consolidated departments would then come under this provision?

"MR. MARTIN: The legislature can, of course, reorganize if it so desires. It can change boards and commissions into single heads, and it can change single heads into boards and commissions, except where the constitution specifically provides that a board or a commission shall have such and such number of members, and so on. There, of course, they couldn't change it." (Official Record, page 1879)

A careful reading of the proceedings in the Constitutional Convention of 1961 as they pertain to the sections of the Constitution under consideration here discloses no substantial disagreement among the delegates over the method by which the principal departments, when established, were to be headed. The original concept as set forth in Sec. b of Committee Proposal 71 was that the head of each principal department shall be a single executive unless otherwise provided in the Constitution or by law. It was there further said that when a board or commission is at the head of a principal department the members thereof shall be nominated and, by and with the advice and consent of the Senate, appointed by the Governor. By the time the proposed constitution had been placed on third reading in the Constitutional Convention, the only change that had occurred was the dropping out of the provision for nomination by the Governor and to reword the language to provide that the Governor should appoint, subject to the advice and consent of the Senate. Article V on third reading appears in the Official Record at page 3057.

Prior to the time of the vote on final adoption of the Constitution, a substitute constitution was offered to the Convention for consideration. Official Record, page 3255. The proponents of the substitute constitution did not make any substantial change in the concept of principal department heads except in two respects: first, they would include as single executives heading principal departments, an auditor general, a superintendent of public instruction, and a highway commissioner; second, they would require the appointments made by the Governor of department heads (whether a single executive or a board or commission) to be subject to the consent of the legislature. Official Record, page 3257.

It is proper to conclude that there was substantial unanimity among the delegates to the Constitutional Convention in coming to the conclusion that the heads of principal departments would be in one of the following three categories:

- (a) a single executive,
- (b) as expressly provided in the Constitution,
- (c) as provided by law.

Such intent of the delegates is clearly expressed in Article V, Sections 3 and 9 of the Michigan Constitution of 1963. Both provisions recognize boards and commissions as the heads of principal departments as so provided by the legislature if not by other provisions of the Constitution. These sections of the Constitution hereinbefore quoted and discussed compel me to conclude that the head of a principal department may consist of a board or commission if so established by law and if not in violation of the explicit provisions in this regard set forth in the Constitution. I therefore conclude that your question must be answered affirmatively.

FRANK J. KELLEY,
Attorney General.

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SCHOOLS: Intermediate Districts – powers of.

A board of education of an intermediate school district is empowered to build facilities to house its staff.

No. 4412

June 23, 1965.

Hon. Emil Lockwood
State Senator
The Capitol
Lansing, Michigan

You have requested my opinion on the following question:

Is a board of education of an intermediate school district empowered to build facilities to house its staff?

School districts possess such powers as the legislature confers upon them by statute, expressly or by reasonably necessary implication. *Senghas v. L'Anse Creuse Public Schools*, 368 Mich. 557 (1962).