

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.

Under Sec. 293a of the School Code of 1955, as added by Act 190, P.A. 1962, the supervision and control of an intermediate school district are vested in a board of education.

The powers of the board of education are enumerated in Sec. 298a of the School Code of 1955 as added by Act 190, P.A. 1962 and last amended by Act 290, P.A. 1964. This section of the School Code of 1955, as so amended, provides in part as follows:

“(1) (1) The board of education may lease or purchase sites, *build, lease or rent such facilities as may be necessary for its staff.*”  
(Emphasis supplied)

In Sec. 298a (1) (1) of the School Code of 1955, as amended, supra, the legislature by plain, certain and unambiguous language has expressly authorized a board of education of an intermediate school district to build facilities for the housing of its staff.

Therefore, it is the opinion of the Attorney General that your question must be answered in the affirmative.

FRANK J. KELLEY,  
*Attorney General.*

650706.1

CONSTITUTION: Deposit of state funds in banks.

BANKS AND BANKING: Depositories for state moneys – Capital notes and debentures.

STATE FUNDS: Deposits in banks.

Capital notes and debentures issued in accordance with Act No. 36, P.A. 1964, are not “capital” within the meaning of Article IX, Sec. 20, Const. 1963.

No. 4426

July 6, 1965.

Hon. Sanford A. Brown  
State Treasurer  
Lansing, Michigan

Article IX, Section 20 of the Michigan Constitution of 1963 reads in pertinent part:

“No state money shall be deposited in banks other than those organized under the national or state banking laws. *No state money shall be deposited* in any bank in excess of 50 percent of the capital and surplus of such bank. \* \* \*” (Emphasis supplied)

Act No. 36, P.A. 1964 added a new section to the Michigan financial institutions act,<sup>1</sup> which provides:

<sup>1</sup> Act 341, P.A. 1937, as amended (C.L.S. § 487.1, et seq.; M.S.A. Rev. Vol. § 23.711 et seq.).

"Sec. 45a. Any bank, with the approval of shareholders owning  $\frac{2}{3}$  of the stock of the bank entitled to vote, may issue convertible and nonconvertible capital notes and debentures subordinated on insolvency, liquidation, or dissolution to all obligations except obligations to shareholders as such, in such amounts and under such terms and conditions as shall be approved by the commisisoner on the basis of normal business considerations. In connection with the issuance of convertible capital notes and debentures additional common stock may be authorized to be issued only in the event of and to the extent of any conversion. Outstanding capital notes and debentures issued pursuant to this section shall be added to 'capital' and 'capital stock' as such terms are used in sections 33, 36, 37, 38, 73 and 74 for the purpose of computing the limitations contained in such sections based on amounts of capital and capital stock."

You have asked whether or not capital notes issued in accordance with Act No. 36 of the Public Acts of 1964, qualify as "capital" for purposes of Article IX, Section 20 of the Michigan Constitution of 1963.

Article IX, Section 20 of the Michigan Constitution of 1963 repeats unchanged the language of Article X, Section 15 of the Michigan Constitution of 1908. Neither the "Proceedings and debate of the Constitutional Convention of the State of Michigan 1907, 1908," nor the "Official Record, Constitutional Convention, 1961" contains a guide to the delegates' understanding of the term "capital and surplus." In the Address to the People, the following comment was made relative to Article IX, Section 20 of the Michigan Constitution of 1963:

"No change from Sec. 15, Article X of the present Constitution."<sup>2</sup>

In *Bacon v. Kent-Ottawa Metropolitan Water Authority*, 354 Mich. 159, at page 169, the Michigan Supreme Court emphasizes its adherence to an interpretation of constitutional language in terms of its common understanding prevailing at the time of its adoption:

"The presumption to which we refer is that the framers and electors meant this exception to be interpreted in accordance with existing laws and legal usages of the time, and also in accordance with common understanding of such existent laws and usages \* \* \*."

Thus, the question presents itself whether the term "capital and surplus of such bank," when interpreted in accordance with the laws and legal usages of 1908 and 1963, and also in accordance with the common understanding of such existing laws and usages, includes or excludes "capital notes and debentures."

The issuance of capital notes and debentures by banks was unknown in 1908. State banks in Michigan were not authorized to issue capital notes and debentures until the effective date of Act No. 36 of the Public Acts of 1964.

When the delegates to the Constitutional Convention of 1961-1962 determined to retain unchanged the language of Article X, Section 15 of the Michigan Constitution of 1908, a bank's "capital and surplus"

<sup>2</sup> Official Record, Constitutional Convention 1961, Vol. 2, page 3402.

was commonly understood to consist of the interest of the stockholders. The term did not include "capital notes and debentures."

At the time of the Constitution's adoption by the electors in April, 1963, "capital and surplus of such bank" as used in Article IX, Section 20, was presented to the voters in the same context as it appeared under Article X, Section 15 of the Michigan Constitution of 1908.

The language of Act No. 36 of the Public Acts of 1964 indicates quite clearly that capital notes and debentures do not evidence a proprietary interest in assets of a bank. In fact, they may only be issued upon approval of shareholders owning at least  $\frac{2}{3}$  of a bank's voting stock. Capital notes and debentures are evidences of a debt owed by the issuing bank to the holders of the notes and debentures.

Act No. 36 of the Public Acts of 1964 provides that such notes and debentures shall be added to the capital and capital stock for the purpose of computing limitations contained in specific sections of the Michigan financial institutions act and cannot be construed as having any impact on Article IX, Section 20 of the Michigan Constitution of 1963.

It is the opinion of the Attorney General that, at the time of its consideration and adoption, the phrase "capital and surplus of such bank" as used in Article IX, Section 20 excluded capital notes and debentures. Thus, Act No. 36 of the Public Acts of 1964 cannot be interpreted to require that capital notes and debentures be treated as "capital" within the meaning of Article IX, Section 20 of the Michigan Constitution of 1963.

FRANK J. KELLEY,  
*Attorney General.*

650 708.1

**CONSTITUTIONAL LAW:** Public hearings of legislative committees.  
**LEGISLATURE:** Committees – public hearings.

Article IV, Section 17 of the Michigan Constitution of 1963 requires publication in the Journal of all scheduled public committee hearings but not of committee meetings.

No. 4427

July 8, 1965.

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

By recent letter you have sought my opinion with reference to the last sentence of Article IV, Section 17 of the Michigan Constitution of 1963.

You refer in your letter to House Bill No. 2107 which was introduced, read the first and second times by its title, and referred to the committee on education on February 9, 1965.<sup>1</sup> This bill was reported out of committee on

<sup>1</sup> No. 11, Journal of the House of Representatives, 73rd Legislature, Regular Session of 1965, p. 225.