

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.

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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, 1965.¹ This bill was reported out of committee on

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

February 23, 1965² with the recommendation that the bill pass.

House Bill No. 2107 was passed by the House on March 2, 1965.³ The bill was then forwarded to the Senate and referred to the committee on education. It was passed by the Senate on April 20, 1965 and presented to the Governor on May 3, 1965 and approved by him on May 11, 1965, becoming Act 28, Public Acts of 1965.

You state in your letter than an examination of the daily House Journals between February 9, 1965, the date on which House Bill No. 2107 was introduced, and February 29, 1965, the date on which it was reported out of committee, fails to show that the House committee on education gave any notice that it was going to consider the bill in question.

Specifically you ask whether this bill has constitutionally passed the House and if it has not, whether the Senate could constitutionally consider it.

Section 17 of Article IV of the Michigan Constitution of 1963 provides:

"Each house of the legislature may establish the committees necessary for the efficient conduct of its business and the legislature may create joint committees. On all actions on bills and resolutions in each committee, names and votes of members shall be recorded. Such vote shall be available for public inspection. Notice of all committee hearings and a clear statement of all subjects to be considered at each hearing shall be published in the journal in advance of the hearing."

In *Burdick v. Secretary of State*, 373 Mich. 578, the Supreme Court considered both the Address to the People and the Official Record of the Convention. It concluded that both were appropriate sources in the ascertainment of the people's intent in adopting the Michigan Constitution of 1963.

The Address to the People, Official Record, Constitutional Convention 1961, p. 3373, with reference to this section, uses both the terms "meeting" and "hearing." It reads as follows:

"This is a new section designed to eliminate secrecy in legislative committee meetings. Such committees must keep a recorded roll call vote of all action on bills and resolutions taken in committee and the vote must be available for public inspection.

"Notice of all committee hearings and a clear statement of all subjects to be considered at each hearing shall be published in the journal prior to the hearing."

It should be noted that in the first paragraph above, the delegates to the Convention in approving the Address to the People used the phrase "committee meetings," but in the last paragraph requiring notice in the Journal, used the term, "hearing."

The Official Record of the Constitutional Convention indicates that there

² No. 21, Journal of the House of Representatives, 73rd Legislature, Regular Session of 1965, p. 314.

³ No. 26, Journal of the House of Representatives, 73rd Legislature, Regular Session of 1965, p. 375.

was little discussion of the last sentence of Section 17, Article IV. This sentence first appeared as part of Section b of a substitute amendment offered by Delegates DeVries, King, Pollock and Durst to Committee Proposal 102. (Official Record, Constitutional Convention 1961, p. 2381).

In its initial form the language of the substitute section read:

“. . . Adequate notice of all committee hearings and a clear statement of all subjects to be considered at each hearing shall be published in advance in the journal. . . .”

Delegate Durst, one of the sponsors of the substitute, discussed it as follows:

“Mr. Chairman, the first sentence would provide that ‘Adequate notice of all committee hearings and a clear statement of all subjects to be considered at each hearing shall be published in advance in the journal.’ It is merely an additional concept to the one we have already adopted that there may be a roll call vote with the yeas and nays upon any bill or resolution which the committee considers. This would only mean that there would be some notice. People may not know, but at least they would have the opportunity to know that a hearing is taking place or the committee was considering some particular matter. This is practically the same procedure which the convention has followed in holding the committee hearings and the committee activities during the forepart of this convention. It seems to us that it is desirable that this type of notice, at least in a minimal form, be published so that the people who are interested in what is going on before the legislature will have advance notice and will be able to be present if they so desire at all public hearings.”

Official Record, Constitutional Convention 1961, p. 2382.

Objection was made to the first word, “adequate,” by Delegate Wanger who said that a witness could refuse to testify before a committee upon the ground that no adequate notice of the hearing had been given.

Delegate Wanger said:

“I wish to speak only at this point with regard to the first sentence, and to point that this will have legal effect. This is not merely a statement of purpose, and it will have this legal effect: if this sentence is not complied with in a hearing, it will be impossible to compel any witness to testify under oath, because the hearing will not have been held in accordance with the constitution. Therefore, I would like to ask Mr. Durst if he would consider striking out the first word ‘adequate.’ It seems to me that having a clear statement of all subjects to be considered at each hearing and having them published in advance of the hearing is fully sufficient. If you put in the word ‘adequate’ you’re going to have to have a supreme court case to determine what is ‘adequate’ the first time a witness refuses to testify.”

Official Record, Constitutional Convention 1961, p. 2383.

By agreement with the sponsors of the amendment to the substitute, the word “adequate” was deleted. (Official Record, Constitutional Convention, pp. 2382-2384).

In my opinion it is clear that it was the intent of the delegates in approving the last sentence of Section 17, Article IV to insure that interested persons would have "advance notice" and thus the opportunity "to be present" at all "public hearings."

My conclusion is in accord with the distinction and difference that is usually made between the terms "meeting" and "hearing." The term "hearing" is variously defined as:

"[an] opportunity to be heard or to present one's side of a case . . . a session (as of a congressional committee) in which witnesses are heard and testimony is taken . . ."⁴

"Proceedings of relative formality, generally public, with definite issues of fact or of law to be tried, in which parties proceeded against have right to be heard . . ."⁵

"It is also used in government and politics for a formal opportunity offered to citizens to state their views on proposed legislation or administrative actions . . ."⁶

While the term "hearing," as indicated by the above definitions, denotes a formal type of proceeding with an opportunity to be heard afforded interested parties, the term "meeting" carries a different meaning.

The term "meeting" is variously defined as:

". . . to hold a session: convene for . . . business or other purpose . . ."⁷

"A coming together of persons, an assembly. Particularly, in law, an assembling of a number of persons for the purpose of discussing and acting upon some matter or matters in which they have a common interest. . ."⁸

Based on the foregoing, it is my opinion that the requirement contained in Section 17, Article IV of the Michigan Constitution of 1963 that notice of all committee hearings be published in advance in the Journal is applicable to all scheduled public hearings before a legislative committee and not to committee meetings.

It is my opinion that absence of printed notice in the House Journal of proposed committee consideration of House Bill No. 2107 does not invalidate the action of the House in approving the bill.

FRANK J. KELLEY,
Attorney General.

⁴ Webster's Third International Dictionary (Third Ed. 1964).

⁵ Black's Law Dictionary (Fourth Ed. 1951).

⁶ Webster's Dictionary of Synonyms (1942).

⁷ Webster's Third International Dictionary (Third Ed. 1964).

⁸ Black's Law Dictionary (Fourth Ed. 1951).