

to the electors at the general November election of 1966. Section 1 of Article XII specifies:

"If a majority of electors voting on a proposed amendment approve the same, it shall become part of the constitution and shall abrogate or amend existing provisions of the constitution at the end of 45 days after the date of the election at which it was approved."

Consequently, such amendment, even though ratified at that election, would not become effective until the expiration of 45 days thereafter. In the meantime, members of the House of Representatives would have been elected at said election as provided by the Constitution and implementing legislation prior to said amendment for a term commencing on the first of January 1967.<sup>1</sup> Prior to the expiration of said 45-day period, said amendment providing for the four-year term would not be in effect.<sup>2</sup>

Answer to your question, however, depends upon the intent of the people in adopting such amendment. Thus, the amended provision might be so phrased as to merely evidence intention that commencing with the first election for members of the House of Representatives held after the effective date of such constitutional amendment, the members would be elected for four-year terms.

However, there is no reason why such amendment could not have the effect of extending the term of those elected at said 1966 general November election for an additional two years making a total of four years, provided that the amendment is so phrased as to express that intention.<sup>3</sup>

FRANK J. KELLEY,  
*Attorney General.*

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**RETIREMENT: Funds.**  
**SAVINGS AND LOAN ASSOCIATIONS: Investment of retirement funds.**  
**CONSTITUTIONAL LAW:**

Public employee pension and retirement funds may be legally invested in state-chartered and federal-chartered savings and loan associations situated in this state.

No. 4439

August 5, 1965.

Hon. James M. Hare  
Secretary of State  
Lansing, Michigan

You have asked for my opinion on the following question:

"May public employee pension and retirement funds be legally invested in state-chartered and federal-chartered savings and loan associations?"

<sup>1</sup> Section 2 of Article XI of the Constitution.

<sup>2</sup> *Hamilton v. Secretary of State*, 204 Mich. 439.

<sup>3</sup> O.A.G. 1943-44 § 0-397, p. 331.

Article IX, Sec. 19 of the Michigan Constitution of 1963 reads:

"The state shall not subscribe to, nor be interested in the stock of any company, association or corporation, except that funds accumulated to provide retirement or pension benefits for public officials and employees may be invested as provided by law; and endowment funds created for charitable or educational purposes may be invested as provided by law governing the investment of funds held in trust by trustees."

In the Address to the People, the delegates to the Constitutional Convention offered the following comment on this section:

"This is a revision of Sec. 13, Article X, of the present constitution which has the desirable object of preventing state ownership of private business. Language has been added to permit, under appropriate restrictions, investment of public employee retirement funds and university endowment funds in such things as share accounts in savings and loan associations and high grade corporate securities."

Official Record, Constitutional Convention 1961, Vol. II, p. 3402.

This is substantiated by the following:

Article IX, Sec. 19, Michigan Constitution of 1963, was considered by the Constitutional Convention as committee proposal 37 d. On first reading Mr. Brake, as Chairman of the committee on finance and taxation, submitted the following reasons in support of said proposal:

"The committee believes that if these (public employees retirement and university endowment) funds are to earn the best return and are to be protected against inflation, the legislature should have the power to permit, under appropriate restrictions as to quality and amount, investment of these funds \* \* \* in such things as share accounts in savings and loan associations, and high grade corporate securities."

Official Record, Constitutional Convention of 1961, Vol. I, page 767.

Mr. Van Dusen, speaking in behalf of the committee proposal reiterated this by saying:

"It was believed by the committee that it would be desirable to permit, under restrictions imposed by the legislature, the investment of these long term funds in securities, including the equity securities of corporations, if the legislature felt that was desirable. This is a protection against inflation. It provides for a balanced portfolio."

Official Record, Constitutional Convention of 1961, Vol. I, page 767.

On second reading Mr. Brake, speaking on behalf of committee proposal 37 d, stated in part:

"The 1908 Constitution forbids the state to own or be interested in stock. We have made an exception here so that, as provided by law, endowment funds and certain trusts may be invested in stocks, contrary to the old prohibition in the Constitution."

Official Record, Constitutional Convention of 1961, Vol. II, page 2658.

Act 156, P.A. 1964, M.S.A. Cur. Mat. § 23.540(101) et seq., is the new savings and loan act which became effective January 1, 1965. Section 305 thereof provides for the issuance by savings and loan associations of savings accounts rather than savings shares as did Section 5 of the former act, Act 50, P.A. 1887, as amended, M.S.A. § 23.541 et seq., which was repealed by Act 156.

Section 306 of Act 156, P.A. 1964, provides:

"Savings accounts may be opened and held solely and absolutely in his own right by, or in trust for, any person, including an adult or minor individual, male or female, single or married, a partnership, association and corporation. Savings accounts may be opened and held by a political subdivision or public or governmental unit for the purpose of pension, retirement and endowment funds. Savings accounts shall be represented only by the account of each savings account holder on the books of the association, and shall be transferrable only upon acceptance by the association of the transferee as a member upon terms approved by the board of directors. The association may treat the holder of record of a savings account as the owner thereof for all purposes without being affected by any notice to the contrary unless the association has acknowledged in writing notice of a pledge of such savings account."

Section 315 of Act 156, P.A. 1964, provides:

"Savings accounts of associations under state supervision, and savings accounts of federal savings and loan associations organized under the laws of the United States and under federal supervision are legal investments for administrators, executors, custodians, guardians, trustees, and other fiduciaries of every kind and nature, insurance, business and manufacturing companies, banks, credit unions, and all other types of financial institutions, charitable, educational, eleemosynary, and public corporations and organizations, municipalities, and other public corporations and bodies, as within their powers, but as to political subdivisions, public and governmental units, such investments shall be limited to the purpose set forth in section 306."

Act 314, P.A. 1965, provides in part:

"Sec. 1. The assets of any public employee retirement system or plan, created and established by the state or any political subdivision, with total assets in excess of \$250,000.00, may be invested, reinvested and managed by its governing body subject to the terms, conditions and limitations imposed by law of the state *upon domestic life insurance companies in the management of its investments*, except as otherwise provided in this act. The authority provided by this act shall be supplemental to that governing the operation of any public employee retirement system." (Emphasis supplied)

Life insurance companies are authorized by Sec. 932 of the Insurance Code of 1956, being Act 218, P.A. 1956, as amended, C.L.S. § 500.932; M.S.A. 1957 Rev. Vol. § 24.1932, to invest in shares of state and federal chartered savings and loan associations situated in Michigan.

It is, therefore, my opinion that public employee pension and retirement funds, as authorized by the legislature in Act 314, P.A. 1965, pursuant to Article IX, Sec. 19 of the Michigan Constitution of 1963, may be legally invested in state-chartered and federal-chartered savings and loan associations situated in this state.

FRANK J. KELLEY,  
*Attorney General.*

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**PUBLIC OFFICES AND OFFICERS:**

**STATE:** Civil Service.

**COMPENSATION:** State officers and employees – Unclassified – Payment of compensation for unused annual and sick leave.

Persons in unclassified positions in state service may receive payment for unused annual and sick leave where so agreed upon.

No. 4355

August 9, 1965.

Mr. Glenn S. Allen  
Controller  
Dept. of Administration  
Lewis Cass Bldg.  
Lansing, Michigan

By recent letter you sought my opinion concerning the payment of compensation to unclassified employees for their unused annual and sick leave upon their leaving an unclassified position to become a classified employee covered by the Michigan civil service system.

In your letter you point out "this subject has a spotty and unsatisfactory history." You further point out the far-reaching long-range implications of this problem.

"Three pending cases bring this issue to a head. However, the three cases are relatively insignificant in comparison with the long-range implications. Governmental reorganization into not more than 20 principal departments will necessarily result in a number of unclassified employees being transferred to classified positions. It is important therefore that a uniform rule be established in advance. Likewise, it may be desirable to treat unclassified employees uniformly."

Because, as you point out, the three cases which presently concern you are undoubtedly only the first of many which will arise, it seems best to consider this matter with regard to the general rules involved rather than with reference to each individual case.

Prior to the passage of Act 346, P.A. 1937, ("AN ACT to provide for a system of civil service in state employment . . ."), and adoption of Section 22, Article VI of the Michigan Constitution of 1908 (the civil service commission amendment) in 1940, all persons employed by the State of Michigan occupied unclassified positions. As our Supreme Court pointed out in *Civil Service Commission v. Auditor General*, 302 Mich. 673, 684: