

for unused annual and sick leave, it is additionally necessary that there be adequate proof to sustain claims covering both items.

Based on the foregoing, it is my conclusion that whether an unclassified person is to receive compensation for the unused annual and sick leave upon his leaving the unclassified position is, in the absence of controlling legislation, dependent upon the agreement. Such person may receive payment for unused sick and annual leave from the appropriation available to the hiring authority. An agency or commission may not at the time a person leaves an unclassified position decide for the first time that he is to receive compensation for unused annual and sick leave.

FRANK J. KELLEY,  
*Attorney General.*

650809.2

**SCHOOLS:** Intermediate school districts – special education program – allocation of millage.

**TAXATION:** Tax allocation – special education.

A county tax allocation board does not have authority to allocate millage for a special education program below that required by the special education budget of an intermediate school district if the budget is within the limitation approved by the voters for such purposes.

No. 4462

August 9, 1965.

Mr. Alexander J. Kloster  
Acting Superintendent of Public Instruction  
Prudden Building  
Lansing, Michigan

In a recent letter you ask substantially the following question:

Does a county tax allocation board have authority to allocate millage for a special education program below that required by an intermediate district's special education budget if the budget is within the limitation approved by the voters for such purposes at the original or subsequent election authorizing the special education program?

Act 269, P.A. 1955, 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. Sections 307a to 324a of the School Code were added by Act 190, P.A. 1962. These sections provide that an intermediate school district shall establish and maintain a special education program when a majority of the school electors voting at an election authorize such a program.

Section 316a of the School Code, as last amended by Act 246, P.A. 1964, designates the form of ballot for such authorization election. It reads as follows:

"The ballot to be used in referring the question of the adoption of sections 307a to 324a to the school electors of an intermediate school district shall be set forth in the following form:

"Shall the intermediate school district of . . . . . county, state of Michigan, come under the provisions of sections 307a to 324a of the school code of 1955, which are designed to encourage the education of handicapped children if any annual property tax levied for administration is limited to . . . . mills?

Yes [ ]

No [ ]

or the following form:

"Shall the intermediate school district of . . . . . county, state of Michigan, come under the provisions of sections 307a to 324a of the school code of 1955, which are designed to encourage the establishment of area vocational-technical education programs if any annual property tax levied for this purpose is limited to . . . . mills?

Yes [ ]

No [ ].'

It is noted that the voters at such election, using the above prescribed form of ballot, designate a millage limitation for purposes of the program. Section 316b, also amended by Act 246, P.A. 1964, where the school electors have voted favorably to come under such a program, permits an increase in such limitation at a later election.

Section 312a of the School Code (also amended by Act 246, P.A. 1964) provides that the county tax allocation board shall allocate a tax rate to an intermediate school district for special education purposes. Such allocation shall not be made within the 15-mill limitation:

"County tax allocation boards shall receive special education and area vocational-technical education budgets from their respective county clerks; shall treat them as other school district budgets are treated; and shall allocate tax rates to intermediate school districts for the purposes set forth in sections 307a to 324a. The allocations shall be handled in the same manner as other allocations for school districts. The allocations shall not be made within the 15-mill limitation and may not exceed the limit authorized by the election at which these sections are placed in effect."

The Michigan Supreme Court has ruled that passage of a proposition authorizing the establishment of a special education program containing a millage limitation is, in effect, an equivalent of a vote of legal authorization for the tax for such purpose to the limit designated. No separate increase of the tax limitation for this purpose need be submitted to the voters. (*Kent County Board of Education v. Kent County Tax Allocation Board*, 350 Mich. 327 (1957).

The issue you present was the subject of an opinion by Circuit Judge Timothy C. Quinn (now Court of Appeals Judge) in the case of *J. Arthur Haley, Clerk-Treasurer of the City of Vassar v. The Board of Education of the Intermediate School District of the County of Tuscola, No. 214, Tuscola County*, November 21, 1963 (not appealed to Supreme Court). In that case the ballot provided for a limitation of three-fourths of a mill for special

education purposes. The defendant submitted a budget to the allocation board that required very nearly the whole three-fourths mill to satisfy. The allocation board, however, only allocated one-half mill—an amount insufficient to satisfy the budget and below the limitation. The plaintiff attempted to enjoin the intermediate district from certifying to it any amount in excess of one-half mill.

The court dismissed the complaint and allowed the certification and levy of the full three-quarters mill. It made the following observation which is pertinent here:

“It is the opinion of this Court that the only function of the allocation board with respect to voted millage increase over the fifteen mill limitation is to determine whether the millage required according to the proposed budget is within the limitation voted. If it is, that is the amount allocated; if it is not, the limitation voted shall be allocated.”

This authority compels me to answer your question in the negative. The allocation board may not allocate a millage less than that required by a district's special education budget if the budget is within the limitation approved by the voters of the intermediate district.

FRANK J. KELLEY,  
*Attorney General.*

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**ELECTIONS: Judges of recorder's and common pleas court of Detroit — canvass of votes.**

Votes cast for candidates for the office of judge of the recorder's court of the City of Detroit at both the primary and general election will be canvassed by the board of canvassers of the City of Detroit as specified by sections 426f and 426l of the Michigan election law as added by Act No. 85 of the P.A. of 1965.

Judges of the common pleas court of Detroit will be elected at the city election and votes cast for candidates for that office will be canvassed by the board of canvassers of the City of Detroit.

Candidates for election as judges of the recorder's and common pleas court of Detroit will file nominating petitions in the office of the city clerk.

No. 4448

August 13, 1965.

Honorable J. Bob Traxler  
Chairman, House Elections Committee  
House of Representatives  
Lansing, Michigan

You have presented for my opinion questions relating to the election of judges of certain courts in the City of Detroit. These will be answered seriatim:

1. “Should the canvass of the vote for judge of Recorder's Court