obligations of responsible, solvent persons, enforceable by law, in the total minimum amount required by Sec. 4 of Act 278, P.A. 1965, supra.

The condition precedent set forth by the legislature in Sec. 4 of Act 278, P.A. 1965, supra, is not met by a contract between the board of control of Saginaw Bay State College and Saginaw Valley College, wherein Saginaw Valley College would transfer assets in the sum of $4,000,000.00 at some future date but not within 120 days after the effective date of Act 278, P.A. 1965, to the board of control of Saginaw Bay State College. Unless such assets are in the possession and control of the board of control of Saginaw Bay State College during the statutory period, the board of control has not fulfilled the condition precedent to the state institution under its control becoming a state institution of higher education, pursuant to the provisions of Act 278, P.A. 1965.

FRANK J. KELLEY,
Attorney General.

651101.1

SCHOOLS: Districts—Reorganization.
TAXATION: Tax limitation increases.

The territory of school districts attached pursuant to the provisions of Act 289, P.A. 1964 to a school district in which a tax limitation increase for operating purposes is in effect is subject to such tax limitation increase without the approving vote of the qualified school electors of the territory attached.

Where the qualified electors of an intermediate school district vote upon and disapprove a reorganization plan calling for one proposed local school district composed of the entire area encompassing an intermediate school district under method 1, Sec. 7 of Act 289, P.A. 1964, requires that a second election be held under method 2.

The intermediate district committee, subject to review by the state committee, is empowered to modify a reorganization plan disapproved under method 1 by the qualified electors of the intermediate school district which would have provided for one proposed local school district composed of the entire area encompassing the intermediate school district so that the reorganization plan would call for two or more proposed local school districts within the intermediate school district before such plan is resubmitted for approval of qualified electors in the respective proposed districts under method 2.

No. 4458

November 1, 1965.

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

You have requested my opinion on the following questions:

"1. When an intermediate area study committee proposes to attach one or more non-high school districts to an existing high school district

and the existing high school district has voted an operating millage in excess of the fifteen mill limitation, will this extra millage be effective in the non-high school districts to be attached to the high school district without a vote of the electors?

"2. If the tax rate is not effective in the proposed annexed districts, may the additional operating millage be included in the proposed reorganization under Act No. 289, P.A. 1964?

"3. If an intermediate school district area study committee proposes a single school district which is approved by the State Committee and the electors vote on the question under Method 1 and such election fails, must the intermediate area study committee call a vote under Method 2?

"4. To what extent may an intermediate area study committee modify the school district organization plan, which has failed at an election held under Method 1, for presentation to the electors under Method 2?"

Act 289, P.A. 1964, being M.S.A. Cur. Mat. § 15.2299(1) et seq., provides for the study and development of plans for the reorganization of school districts by intermediate district committees and the state committee for school district reorganization, and for elections to accomplish school district reorganization.

The state committee for reorganization of school districts is created pursuant to Sec. 2 of the act, supra, and its powers and duties are enumerated in Sec. 4 of the act, supra. Sec. 5 requires the organization of an intermediate district committee for reorganization of school districts. Its powers and duties are set forth in Sec. 6 of the act. Subject to review by the state committee, the intermediate district committee is charged with the formulation of a school district reorganization plan.

Sec. 7 of the act states the form of the proposition to be voted upon by the electors when passing upon the school district reorganization plan, under method 1 and method 2, respectively. The basic difference between the two methods is that under method 1 the entire area encompassed by the intermediate school district plan votes as one unit on the reorganization plan, while the vote under method 2 is by proposed districts within the area of the intermediate district. This section of the statute expressly bars a vote on assumption of bonded indebtedness in any election held under the act but makes Sections 412 and 413 of Act 269, P.A. 1955, as amended, being C.L.S. 1961 § 340.412-413; M.S.A. 1959 Rev. Vol. and 1963 Cum. Supp. § 15.3412-3413, applicable so that any school district having bonded debt shall remain as an assessing unit until the indebtedness has been retired and allows an election for the assumption of bonded indebtedness three years after the effective date of the particular organization plan.

Article IX, Sec. 6 of the Michigan Constitution of 1963 fixes a limit of the total amount of general ad valorem taxes imposed upon real and tangible personal property for all purposes in any one year not to exceed 15 mills on each dollar of assessed valuation of property as finally equalized. This same section of the Constitution authorizes the increase of the tax limitation in the aggregate not to exceed 50 mills on each dollar of valuation for a

period not to exceed 20 years at any one time upon approval of the electors, qualified under Sec. 6 of Article II of the Constitution, voting on the question.

The people in approving the Michigan Constitution of 1963 have, in substance, retained the same provisions previously found in Article X, Sec. 21 of the Michigan Constitution of 1908.

The approval of the electors of a question to increase the tax limitation for operating purposes has been held to fix a rule of maximum taxation within the school district under the Constitution. *Dearborn Township School District No. 7 v. Cahow,* 289 Mich. 643 (1939). Discretion is vested in the board of education to raise the money by taxation over and above the constitutional tax limitation but within the voted tax limitation increase on property within the school district. *Rentschler v. Detroit Board of Education,* 324 Mich. 603 (1949).

Article IX, Sec. 3 of the Michigan Constitution of 1963 commands that the legislature shall provide for the *uniform* general ad valorem taxation of real and tangible personal property not exempt by law. The law appears to be well settled that the tax burden of a governmental unit cannot be imposed upon any territory smaller or greater than the governmental unit. *The People, ex rel. The Detroit and Howell Railroad Co. v. The Township Board of Salem,* 20 Mich. 452, 474 (1870).

Where the electors of a school district have authorized a tax limitation increase the board of education of the school district was not only empowered but required to impose taxes uniformly within such tax limitation increase upon territory attached to the school district, notwithstanding absence of popular approval within the territory annexed. *Hall v. Ira Township,* 348 Mich. 402 (1957).

Relying upon the aforesaid authorities the Attorney General has ruled in opinion No. 3577, O.A.G. 1961-62, page 66, that the territory of a disorganized school district was subject to the tax limitation increase for operating purposes voted by the electors of the school district to which it was attached so that the board of education of a school district to which such territory was attached could levy operating taxes within the tax limitation increase without the approval of the electors of the territory so attached. It was pointed out in this opinion that in the absence of a statute requiring the vote of the electors of the territory so attached the authority of the board of education to raise taxes within the tax limitation increase was binding upon the entire territory of the school district. The holding of this opinion is sound and is equally persuasive here.

The legislature has imposed no requirement in Act 289, P.A. 1964, supra, that would make the attachment of the territory of a school district contingent upon the favorable vote of the qualified school electors thereof on a question to increase the tax limitation for operating purposes already in effect in the school district to which such territory is to be attached under the proposed reorganization plan. Method 1 contemplates an election within the entire area encompassed by the intermediate plan with eligible voters voting as a unit on the question and clearly precludes any question involving a tax limitation increase as a condition precedent thereto. While method 2 does not by its terms bar an election upon the question of an

increase in a tax limitation, the legislature has not seen fit to make reorganization subject to such question.

Therefore, it is my opinion that the territory of school districts attached pursuant to the provisions of Act 289, P.A. 1964, supra, to a school district in which a tax limitation increase for operating purposes is in effect is subject to such tax limitation increase even though the qualified school electors of the territory so attached have not voted on the question of an increase in the tax limitation.

In light of the answer to your first question, it is unnecessary for me to answer your second question.

Since questions 3 and 4 are related they will be considered together.

Sec. 6 of Act 289, P.A. 1964, supra, provides in pertinent part as follows:

> "The intermediate district committee shall follow the procedure guide provided by the state committee and prepare a district reorganization plan, which shall be submitted to the state committee for its approval or disapproval. The plan shall provide for the reorganization of school districts within the intermediate district so that all areas of the district may become a part of a school district operating or designed to operate at least 12 grades. The intermediate district committee shall hold at least 1 public hearing regarding the plan but may hold as many more as it deems necessary. Hearings shall be advertised by publication at least once in a newspaper of general circulation in the districts 10 days or more before the scheduled hearing. The intermediate district plan for reorganization shall be submitted to the state committee for its consideration within 9 months after receiving the manual of procedure from the state committee. If the intermediate district plan is approved by the state committee, the plan shall be submitted to the electors as provided in section 7 of this act. If an intermediate district plan is rejected by the state committee, a revised plan shall be submitted by the intermediate district committee within 90 days after receipt of the rejection of the original plan. If the revised plan is not accepted by the state committee, the state committee shall submit a plan for the reorganization of the school districts in the intermediate school district and the intermediate committee shall also submit a plan for the reorganization of the school districts in the intermediate school district. The intermediate school district board shall submit both plans to the electors of the intermediate school district and the plan receiving the larger number of votes shall be submitted to the qualified electors of the intermediate school district in accordance with the requirements of method 2 provided in section 7 of this act. Following this election, the intermediate committee shall be dissolved and the requirements of this act shall have been met and no further plans shall be re-submitted for 5 years by either the state committee or the intermediate district. The intermediate district committee shall also be dissolved on completion and acceptance of the plan by the state committee and the vote or votes on the plan by the electors of the proposed school district."

The legislature has, as hereinbefore stated, provided for two methods of

popular approval of the intermediate school district reorganization plan. These are set forth in Sec. 7 of the act, which reads in part as follows:

"Not less than 90 days nor more than 6 months following approval of an intermediate district plan as provided in section 6 of this act elections shall be held according to one of 2 methods. The intermediate district committee shall determine which election method shall be used.

"Method 1. The entire area encompassed by the intermediate district plan shall vote as a unit on the question: 'Shall the approved reorganization plan for the . . . . . intermediate district be adopted?

"Yes ( )

"No ( )'

"If a majority of the qualified electors present and voting approve the plan it shall be declared adopted and shall become effective throughout the area on the date of the election if the election is held after April 30 but before September 1. The effective date shall be July 1 following if the election is held after August 31 but before May 1.

"Method 2. The proposed districts provided for in the approved plan shall vote by proposed districts on the question: 'Shall the approved reorganization plan for a proposed local district . . . . . within the intermediate district of . . . . . be adopted?

"Yes ( )

"No ( )'

"If a majority of the qualified electors present and voting in a proposed district approve the plan for that proposed district it shall be declared adopted and shall become effective throughout the proposed district on the date of the election if the election is held after April 30 but before September 1. The effective date shall be July 1 following if the election is held after August 31 but before May 1.

"If election method number 1 is adopted by the intermediate district committee and if the question voted on fails to obtain an affirmative majority, then another election using method number 2 shall be held not less than 90 days nor more than 6 months after the date of the first election. The results of this election using method number 2 shall be final and the requirements of this act shall have been met.

"If the intermediate district plan provides that the boundaries of an existing school district shall remain the same such district shall not participate in an election held under either method number 1 or method number 2.

"If the election is held under method number 1, the plan to be voted on shall not cause an existing school district to be divided between 2 intermediate districts but property transfers may be made later according to the provisions of Chapter 5, part 2 of the school code. The plan may provide for division of districts within an intermediate district.

"If and when voting method number 2 is used, the plan shall not cause an existing school district to be divided between 2 proposed

local districts within the intermediate unit but property transfers may be made later according to chapter 5, part 2 of the school code. * * *"

Reading these two sections together, it is clear that the legislature has empowered the intermediate district committee to select the election method to be used. If they select method 1, the entire area encompassed by the intermediate district plan shall vote as a unit on the question.

School districts, except as provided in Sec. 4(a) of the act, which operate grades kindergarten through twelve, have been held subject to reorganization under Act 289, P.A. 1964, supra, O.A.G. No. 4442, October 4, 1965. Thus, it is possible that the reorganization plan for an intermediate district may call for one local school district coterminous with the entire area of the intermediate district.

Were the intermediate district committee to submit a reorganization plan that would reorganize the entire area encompassed by the intermediate district as one local school district, and should the qualified electors of the intermediate school district reject the reorganization plan, the statute commands that the board of education of the intermediate district conduct the election employing method 2 to be held not less than 90 days nor more than 6 months after the date of the first election. In such instance the statute also requires that the results of the election using method 2 shall be final and the requirements of this act shall have been met.

The legislature has used the word "shall" as a command and when directed to a public body it excludes the idea of discretion. *Township of Southfield v. Drainage Board for Twelve Towns Relief Drains,* 357 Mich. 59 (1959). That this was the intent of the legislature is also supported by a reading of Sec. 7 of the act which provides that the results of this election using method 2, shall be final and the requirements shall have been met after the second election is held in accordance with the statute.

It must follow that where the intermediate district committee determines method 1 for approval of a plan to reorganize the entire area encompassing an intermediate district into one local school district and such an election fails, another election using method 2 must be held before the requirements of the act shall have been met.

Therefore, in answer to your third question, it is my opinion that where an intermediate district committee submits a reorganization plan consisting of the entire area of the intermediate district for the approval of electors under method 1, and such plan is not approved by the qualified electors, the statute requires that there be another election using method 2 to be held not less than 90 days nor more than 6 months after the date of the first election.

At the same time Sec. 7 of the act, supra, explicitly requires that when method 2 is employed the approved plan shall be voted upon by proposed districts on the question: "Shall the approved reorganization plan for a proposed local district . . . . . within the intermediate district of . . . . . be adopted?" The statute then contains the requirement that if a majority of the qualified electors present and voting in a proposed district approve a plan for that proposed district, it shall be declared adopted in accordance with the act.

When method 2 is to be followed, the statute proscribes the division of any existing district between two proposed local districts. Method 2 then contemplates a number of elections held in an intermediate school district where proposed districts are acted upon by the qualified electors present and voting on a plan for the respective proposed districts.

Statutes should be so construed as to give meaning and effect to all provisions of the statute. *Board of Education of Presque Isle Township School District No. 8 v. Presque Isle County Board of Education*, 364 Mich. 605 (1961). A construction should be avoided that will result in an absurdity. *General Motors Corporation v. Unemployment Compensation Commission*, 321 Mich. 604 (1948).

In answer to question 3, ruling was made that a reorganization plan calling for the entire area of the intermediate district to form one local school district which is disapproved by the electors under method 1 must be resubmitted to the qualified electors under method 2. It can only be resubmitted to the qualified electors under method 2 if the intermediate district committee makes changes in the reorganization plan so that the plan finally approved by it and the state committee under Sec. 6 of the act would allow the qualified electors of the intermediate district to vote within proposed districts provided for in the modified approved plan on the particular district proposed. The legislature has used the word "district" in the plural so that method 2 does not contemplate the entire area encompassed in the intermediate district plan to be voted on under that particular method. Since the impact of Act 289, P.A. 1964, supra, is not terminated unless two elections are held where the first election is unsuccessful except when the electors vote on two alternate plans under Sec. 6, the legislature must have intended under the attendant circumstances to confer the implied power on the intermediate district committee to modify the school district reorganization plan, subject to review by the state committee after the time that the reorganization plan fails of approval in the election held under method 1.

Where the reorganization plan disapproved by the qualified electors under method 1 sought to create two or more proposed local districts, such a plan must be resubmitted to the qualified electors of the proposed local districts without modification in the plan. Such a plan is subject to vote under both methods so the statute is not required to be construed to allow the intermediate committee to modify the plan after its rejection under method 1.

Therefore, it is my opinion that where the qualified electors of an intermediate school district disapprove a reorganization plan providing for a proposed local school district composed of the entire area encompassing the intermediate district in an election held under method 1, as provided in Sec. 7 of Act 289, P.A. 1964, supra, the intermediate committee subject to review by the state committee may modify the reorganization plan to provide for two or more proposed local districts to be voted upon by the qualified electors of the proposed local districts under method 2. The intermediate committee has no authority to modify a reorganization plan disapproved under method 1 that is susceptible of a vote by the qualified electors in the proposed local districts under method 2.

FRANK J. KELLEY,
Attorney General.