

of the county voting upon such a proposal. In that event, the affirmative vote of the electors would be a necessary condition precedent to the levy of an income tax by the county, irrespective of whether the charter contained such a requirement.

(b) Even in the absence of such a statutory requirement, the charter adopted by a given county might require approval of the electors to the levy of an income tax, in which case the affirmative vote of the electors would likewise be a necessary condition precedent to the levy by the county of such a tax.

In the absence of such a statutory or charter requirement for a vote of the people, the Senate bill would permit the county to impose specific taxes to the extent that the levy and collection of such taxes has been neither pre-empted by the state nor prohibited by law; but the House substitute bill does not in itself empower the county to levy and collect specific taxes with or without a vote of the people unless and until such levy and collection has theretofore been authorized by law.

FRANK J. KELLEY,  
*Attorney General.*

660502.2

**COMMUNITY COLLEGES:** Authority of board of trustees to move the site of a community college facility.

Under Act 188, P.A. 1955, as amended, the board of trustees of a community college is the sole authority within the district empowered to move the site of a community college facility from an established site to a different one, to the exclusion of the qualified district electors.

The question of moving the site of a community college facility may not be submitted to the voters of the district, nor may a special election under Section 4b of Act 82, P.A. 1957, as amended, be called to vote on moving the site.

No. 4434

May 2, 1966.

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

You have requested my opinion on the following questions:

"1. Is the Board of Trustees of a community college the sole authority to move the site of a community college facility from an established site to a different site;

"2. May the Board of Trustees by a majority vote submit to the voters of the district the matter of transferring the community college facility to a new and different site under the following wording of the referendum section (being Section 15.615(14a) M.S.A. . .)? Does the matter of designating a site come within the scope of the powers of the electors?

"3. Under the provisions of Section 15.615(140b) M.S.A. in the event of a proper written request of not less than 10% of the registered voters, can the matter of moving the site of an established community college facility be authorized in the following: 'Any question or measure which may be voted on and decided by the qualified voters?'"

(1) Community college districts are creatures of the legislature and were authorized to be created by Act 188, P.A. 1955, as amended.<sup>1</sup>

In accordance with Section 3 of Act 188, P.A. 1955, as amended by Act 237, P.A. 1964; M.S.A. 1965 Cum. Supp. § 15.615(13), they have been made a body corporate, the administration of which has been delegated to a board of trustees.

Section 4 of this Act, as amended,<sup>2</sup> sets out the powers expressly granted to the board of trustees and grants general authority to acquire, locate, construct, and develop a community college.

Thus among the legislative delegations made by this section are the powers: (1) to build and equip such buildings and structures for the college as may be necessary; (2) to borrow funds for school purposes, subject to Act 202 of P.A. 1943, as amended; (3) to issue bonds needed to finance specific projects; (4) to adopt bylaws for the control and government of the community college district; (5) to have the care and custody of all community college property; and (6) to hold in the name of the board all real estate and improvements acquired and erected.

Of particular interest to the questions posed by your request is subpart one.

Subpart 1, Section 4 of Act 188, P.A. 1955, as amended, provides expressly that the board of trustees has the power:

" . . . to sell or exchange any real or personal property of the district which is no longer required thereby for school purposes. . . ."

Reference to my discussion of question two makes it clear that this right to dispose of unneeded property is not subject to referendum.

Likewise, subpart one further provides that the board of trustees shall have the authority:

" . . . To *locate*, acquire, purchase or lease in the name of the district *such site or sites* within or without the district for college buildings . . . as may be necessary. . . ." (Emphasis supplied)

This power is likewise not subject to referendum.

The language providing that the board may locate "such site or sites . . . as may be necessary" must be accorded some significance.

This express grant, read together with the right to sell or exchange property previously quoted, indicates the legislature must have been aware of the

<sup>1</sup> This act as amended through 1961 is recorded in its entirety in C.L. 1961 Supp. § 390.871 et seq.; and has since been amended by Acts 38, 50, 78, 98, P.A. 1963; Acts 184, 237, P.A. 1964, and Acts 19, 68, 84, P.A. 1965; being M.S.A. 1965 Cum. Supp. § 15.615(11) et seq.

<sup>2</sup> Amended by Act 68, P.A. 1965; M.S.A. 1965 Cum. Supp. § 15.615(14).

possibility that the board might need to change a previously selected college site, and therefore chose not to limit the number of sites the board is authorized to acquire.

The word "locate" when used in a statute dealing with the responsibility of a county school board to select a school site, has been held to mean "to designate the site or place." *Board of Supervisors of Marshall County v. Stephenson, et al.*, (Miss. 1930) 134 So. 142, 144.

Likewise "locate" has been defined to mean "to establish in a particular place." *Feagins v. Wallowa County*, (Or. 1912) 123 P. 902, and "to ascertain and determine the place of," *Foster & others, v. Park Commissioners of City of Boston*, 133 Mass. 321, 332 (1882).

Therefore it must be concluded that the word "locate," as used in the above set out statute, grants to the board the power to designate and establish the site for community college facilities.

The Michigan Supreme Court has held a school board lawfully selected a school site under statutory authority to "designate and establish such number of sites for schoolhouses in the district as may be necessary. . . ." *Board of Education of City of Holland v. Van Der Veen*, 169 Mich. 470.

It must reasonably follow that the express authority to designate and purchase a site initially, must carry with it the power to subsequently change any such election. This conclusion is further substantiated by the legislature's express authorization of multiple sites.

An implied power or authority may arise from a statute by "reasonably necessary implication." *Senghas v. L'Anse Creuse Public Schools*, 368 Mich. 557.

Likewise, it has been held that the inhabitants of school districts acquire no vested rights to the location of the schoolhouses. *Farnum's Petition*, 51 N.H. 376, 379; *School District No. 3 of Town of Adams v. Callahan*, (Wis. 1941) 297 N.W. 407.

In the *Callahan* case, where property owning electors attacked the abolition of their school and the resultant requirement that their children attend a different school located further from their homes, it was held that school electors have no vested, inviolable right in school district boundaries. Thus the children could be required to attend a different school notwithstanding the added inconvenience.

Therefore it can only be concluded that the express and reasonable implied powers delegated by the statutes, grant to the board of trustees, the power to move the site of a community college facility from an established site to a different site.

That this power is exclusive of any election right in the qualified district electors, thus making the board the *sole* authority within the district empowered to change the site of a community college facility, becomes apparent from the answer to question two.

(2) Section 4a of Act 188, P.A. 1955, as amended by Act 237, P.A. 1964; M.S.A. 1965 Cum. Supp. § 15.615(14a), which provides for general elections on community college matters, specifies that the board of trustees may submit to the electors:

“. . . any measure or question within the scope of the powers of the electors. . . .”

The restrictions this language imposes upon the voting power of the electors are to be judged by reference to the powers expressly granted the board.

The statute granting specific powers and authority to the board does not contain any provision for delegating these specific powers to the electors. Section 4 of Act 188, P.A. 1955, as last amended by Act 68, P.A. 1965; M.S.A. 1965 Cum. Supp. § 15.615(14).

In such a situation other jurisdictions have held that statutory power once delegated by the legislature to a municipal corporation or a school board cannot be redelegated by that body to the electors. *Galindo v. Walter*, (Cal. 1908) 96 P. 505 (municipal corporation); *Muehring, et al. v. School District No. 31 of Stearns County*, (Minn. 1947) 28 N.W. 2d 655 (school board).

Thus in *Muehring, et al. v. School District No. 31 of Stearns County*, supra, where a school board was by statute given the power to provide free transportation for pupils, the submission of this power to the voters without statutory authorization was an unauthorized redelegation of a legislatively delegated power, and without legal effect.

The court in returning their decision said:

“It is elementary that a public corporation, agency, or officer to whom governmental power has been delegated by statute cannot redelegate such delegated power.” 28 N.W. 2d 655, 658.

The term “scope of the powers of the electors” refers to those powers not specifically delegated to the board of trustees. The power to move the site of a community college facility, as specified in answering the first question, has been delegated by the legislature to the board. It therefore is beyond the authority of the board to submit the question of moving such site to the electorate. Any such result would be an unauthorized redelegation of power specifically vested in the board by the legislature.

Thus, in the absence of power in the electors through which they may act to move the site of a community college facility, it is evident that the board has sole authority within the district to make such changes, exclusive of any right in the qualified district electors.

It is clear, however, that this does not preclude the community college district board from seeking the advice of its qualified electors through newspaper polls or straw votes taken at a meeting called by the board on the question of moving the site of a community college facility.

(3) Section 4b of Act 188, P.A. 1955, as last amended by Act 200, P.A. 1961; being C.L.S. 1961 § 390.874(b); M.S.A. 1965 Cum. Supp. § 15.615(14b), provides for the calling of a special election on “. . . any question or measure which may be voted on and decided by the qualified voters. . . .” This provision, unlike the general election under Section 4a, requires that there first be received a written request of not less than 10% of the qualified voters of the district, before the election may be called.

Since our previous discussion makes it clear that the question of moving a community college site may not be considered by the electors, no such "question or measure" is presented. Therefore the provisions of Section 4b, as well as Section 4a, may not be utilized in this situation.

It is therefore my opinion that sole authority to move the site of a community college facility from an established site to a different site exists in the board of trustees of the community college.

FRANK J. KELLEY,  
*Attorney General.*

660502.1

**EXECUTIVE BRANCH: Organization of principal departments.**

The statutory provisions for filling vacancies on existing boards, commissions or agencies transferred by a Type II transfer under Act 380 P.A. 1965 enumerated and discussed.

Type II transfer of existing departments, boards, commissions or agencies to a principal department established by Act 380 PA 1965, the Executive organization act of 1965, discussed and construed.

Authority of heads of principal departments, directors and deputies to delegate or redelegate duties and functions to subordinates construed.

Under Act 380 P.A. 1965 as amended by Act 407 P.A. 1965 a director of a department, commission or board may not engage in any business, vocation or employment outside of his office except transactions for his own account and only then when there is no conflict of interest.

No. 4479A

May 2, 1966.

Hon. George Romney  
Governor  
Capitol  
Lansing, Michigan

Under date of March 9, 1966 I issued to you my Opinion No. 4479 construing the meaning of a Type I transfer under Act No. 380 Public Acts of 1965, known as the Executive organization act of 1965.<sup>1</sup> As stated in that opinion, due to your expressed desire that you be furnished with my response as expeditiously as possible as to the meaning of a Type I transfer, the several questions stated in your request were divided with only the Type I transfer covered by Opinion No. 4479 with the remainder of the questions to be answered at a later date. I now proceed to answer the balance of your queries.

You next inquire:

"Questions have also arisen regarding the continuation of certain boards and commissions which have been given a *Type II transfer* to a principal department, particularly when it comes to the appointment or reappointment of the members of these boards or commissions. There

<sup>1</sup> M.S.A. 1965 Cum. Supp. § 3.29(1) et seq.