that such payment would be in the form of a loan to the school district which the school district would be required to repay to the school bond loan fund in the manner required by law; the school district will be required to furnish you as state treasurer with a receipt evidencing the loan and specifying the terms of repayment, as required by law.

Upon the fulfillment of the above conditions in a manner reasonably acceptable to you, you would be authorized to make payment of the amounts due on the bonds and interest coupons and thereupon to demand their surrender and delivery to you as state treasurer.

Because of the safeguards built into the Michigan Constitution and statutes there should be no default of Michigan qualified school bonds. The School Loan Fund Program will have afforded the school district access to loan funds prior to the due date of the principle and interest on such bonds. In order to advise of the procedures in the remote possibility of nonpayment, however, I have set forth the foregoing guide lines.

FRANK J. KELLEY,
Attorney General.

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CONSERVATION, DEPARTMENT OF: Arrests: Military Service.

Privilege from arrest granted to military personnel in actual service of the state or United States by Section 53 of Act 84, P.A. 1909, as amended, does not provide immunity from arrest for violation of conservation laws which constitute a crime.

No. 4443 August 31, 1966.

Dr. Ralph A. MacMullan
Director
Department of Conservation
Lansing, Michigan

Dear Dr. MacMullan:

You have requested my opinion concerning the extent to which the privilege from arrest granted by Section 53 of Act 84 of the Public Acts of 1909, as amended,[1] applies to violations of the conservation laws of Michigan.

Section 53, supra, reads in pertinent part as follows:

> "All officers, warrant officers, and enlisted men who may be in the actual service of the state or of the United States, in all cases, except for treason, felony or breach of the peace, shall be privileged from arrest and imprisonment during the time of such actual service."

There are no Supreme Court decisions in Michigan which have construed this statutory language. There are, however, authoritative cases

[1] C.L.S. 1961 § 32.53; M.S.A. Rev. Vol. 1961 § 4.644.

which construe nearly identical constitutional provisions both in the United States Supreme Court and that of this state.

Article I, Section 6 of the Constitution of the United States reads in pertinent part as follows:

> "The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; * * *."

The foregoing provision of the United States Constitution has a historical source in England where the members of Parliament had for years asserted their "Parliamentary privileges."

This provision of the United States Constitution came under consideration by the Supreme Court of the United States in the case of *Williamson v. United States* (1908), 207 U.S. 425, 52 L. ed. 278, involving a person accused of conspiring to suborn perjury in proceedings for the purchase of public lands. In an elaborate opinion written by Mr. Justice White, in which he reviewed at length the law on the subject as it existed both in England and in this Country, he reached the conclusion that the constitutional exemption would not apply to a member of Congress arrested for an indictable offense. Its application was limited by the Court to arrests in aid of civil process.

Subsequently in 1934 the Court of Appeals of the District of Columbia decided the case of *Long v. Ansell,* reported in 69 F. 2d 386. The issue in that case was whether or not a Senator of the United States, while serving in his official capacity, is exempt from the service of civil process in the District of Columbia. The Court of Appeals held the Senator not to be so exempt from service. In its opinion the Court referred to the *Williamson case,* supra, and said:

> "The constitutional exemption has never been interpreted as a retreat for Congressmen and Senators from arrest for crime. At the time of the adoption of the Constitution there were laws in the states authorizing imprisonment for debt in aid of civil process. Undoubtedly it was to meet this condition that the exemptions in federal and state Constitutions were aimed. The reason for incorporating this provision in the Constitution has largely disappeared. We no longer have imprisonment for debt, except in a few jurisdictions where an absconding debtor may be arrested and imprisoned. The decisions of the courts, therefore, in limiting the exemption merely to arrests in aid of civil process, and in conformity with the practice of legislation on this subject, have greatly limited the scope of the exemption. That which at the time of the adoption of the Constitution was of substantial benefit to a Member of Congress has been reduced almost to a nullity." (page 388)

The foregoing cases clearly delineate the extent of the privileges from

arrest conferred upon the members of Congress under the United States Constitution.

The first Michigan Constitution contained similar language relating to members of the state legislature. Article IV, Section 9, Constitution of 1835, read as follows:

> "Senators and representatives shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest, nor shall they be subject to any civil process, during the session of the legislature, nor for fifteen days next before the commencement and after the termination of each session."

This privilege from arrest was retained in the Constitution of 1850 in Article IV, Section 7, and in the Constitution of 1908 in Article V, Section 8.[2]

The Michigan Supreme Court in the case of *In re Wilkowski,* 270 Mich. 687, had under consideration a proceeding in contempt for failure by Wilkowski to obey an order for appearance as a witness before a judge of the recorder's court in Detroit in an examination being conducted under the so-called one-man grand jury law. The Court held that such a proceeding was criminal in nature and that the constitutional immunity of members of the legislature did not apply. The Michigan Court cited and followed the pronouncement of Chief Justice White in the *Williamson case,* supra.

The courts of other states have placed a like interpretation upon similar provisions in their state constitution or statutes. The Court of Appeals of Ohio, Summit County, in the case of *City of Akron v. Mingo* (1958), 162 N.E. 2d 865, had under consideration an appeal from a prosecution for violation of traffic laws by the defendant which occurred on his way home from court where he had been in attendance as a defendant in a criminal action. The Ohio statute granted privilege from arrest to suitors while going to, attending, or returning from court but further provided that the privilege did not extend to cases of treason, felony, or breach of peace. The Ohio Court of Appeals held that the immunity from arrest applied only to civil arrest while returning from attendance at court and a person in such circumstance is not immune from criminal arrest. On appeal the Supreme Court of Ohio affirmed. In its decision appearing in the case of *City of Akron v. Mingo* (1959), 169 Ohio St. 511, 160 N.E. 2d 225, the Ohio Supreme Court held that under its statute the words "treason, felony, and breach of the peace" included all crimes and misdemeanors of every character and therefore the claim of the appellant to immunity from arrest while returning to his home from attendance at court as a defendant, during which trip he was arrested and charged with two misdemeanors, was untenable.

The case of *Swope v. Commonwealth of Kentucky* (1964), decided by the Court of Appeals of Kentucky and reported in 385 S.W. 2d 57, involved construction of the Kentucky Constitution and a statute which provided that members of the General Assembly shall be privileged from

[2] The language was changed in the Constitution of 1963 and Article IV, Section 11, limits the privilege to civil arrest and civil process.

arrest during their attendance on the sessions of their respective Houses and in going to and returning from the same, in all cases except treason, felony, and breach of the peace. The defendant was a member of the General Assembly and while parking his car to attend a high school basketball game being held while the Assembly was in regular session, got in a dispute and was arrested and convicted of a breach of the peace. On appeal the judgment of conviction was affirmed, the Court relying upon the *Williamson* and the *Ansell* cases, supra. The Court pointed out that under Kentucky statutes arrest could be made in civil cases and therefore the privilege of the members of the General Assembly was not reduced to a nullity but the Court found that the privilege was "never intended as a sanctuary for members who had committed a public offense."[3]

The decision of the Supreme Court of the United States in the *Williamson* case, supra, was handed down January 6, 1908. The statute here under consideration (Act 84, P.A. 1909) at the time of its enactment was a bill of major proportions dealing with the military establishment and the state military board and containing 84 sections of which Section 53 formed a part. The act was given immediate effect and became effective May 12, 1909. It seems a fair inference from the nature of this legislation that the members of the legislature in incorporating in the act the language appearing in Section 53 thereof were fully familiar with the construction which had been placed upon the words "treason, felony, or breach of the peace" by the Supreme Court of the United States in deciding the *Williamson* case, supra, the preceding year. In my judgment the Michigan courts would give the same construction to these words as used in the statute here under consideration as have been given to the words in the cases discussed above.

I am therefore of the opinion that Section 53 of Act 84 of the Public Acts of 1909 as amended does not grant immunity from arrest to military personnel for violation of conservation laws amounting to a criminal offense.

FRANK J. KELLEY,
Attorney General.

[3] For a further discussion see O.A.G. 1926-28, page 343; 5 Am. Jur. 2d, Arrest, page 786, § 104; 6 C.J.S., Arrest, page 574, § 3.