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PUBLIC OFFICES AND OFFICERS: Conflict of interest.
SCHOOLS: Members of school boards in conflict of interest.

Under present Michigan law a member of a city or village council, or county board of supervisors is in conflict of interest if he simultaneously serves as an officer or director of a financial institution which has a contract or enters into a business transaction with the public body he is serving. Depending upon particular circumstances, a member of any such public body may also be in conflict of interest if he simultaneously serves as an employee of a financial institution which has a contract or enters into a business transaction with the state or any other governmental body other than the one he is serving.

Under present Michigan law a member of a school board is in conflict of interest if he simultaneously serves as an officer or director of a financial institution which has a contract or enters into a business transaction with the state or any political subdivision thereof including the school board that he is serving. Depending upon particular circumstances, a member of a school board may also be in conflict of interest if he simultaneously serves as an employee of a financial institution which has a contract or enters into a business transaction with the state or any political subdivision thereof, including the school board that he is serving.

Under present Michigan law members of school boards, city or village councils, or county boards of supervisors are in conflict of interest if they accept other employment or engage in other business or professional activity that would require them to disclose confidential information acquired in the course of their official duties.

No. 4555 April 12, 1967.

Hon. Robert Richardson
State Senator
3434 Davenport Avenue
Saginaw, Michigan

You have requested an advisory opinion on the following questions:

1. "Is a person who serves simultaneously as a bank or savings and loan association officer, director, or employee and as a member of an elected or appointed school board, city or village council, or county board of supervisors, in violation of Public Act No. 317 of 1966 under the following conditions:

(a) When the financial institution with which the public board member is connected has a direct or indirect interest, financial or otherwise in a contract with the particular public body on which the member sits?

(b) When the financial institution with which the board member is connected has a direct or indirect interest, financial or otherwise, in a contract with the state or any of its political subdivisions?

(c) When the public board member engages in any business transaction involving that board and his financial institution?

(d) When the public board member engages in any business transaction involving his fianancial institution and the State of Michigan or any political subdivision of the State?

2. "The previous relationships described in the foregoing situations would also be subject to question and your opinion is requested in the case of the public board member who accepts other employment or engages in a business or professional activity that would require him to disclose confidential information acquired by him in the course of his official duties as a member of the public board."

Controlling Law Prior to Enactment of Act 317

Under the common law, the rule is well established that a contract made by a public officer is against public policy if it interferes with the unbiased discharge of his duty to the public or if it places him in a position inconsistent with such duty or even if it has a tendency to induce him to violate such duty. (43 Am. Jur. "Public Officers" § 294, p. 103).

In the absence of statute this is also the rule in Michigan, as indicated by *The People, ex rel. Aldert Plugger, et al. v. The Township Board of Overyssel,* 11 Mich. 222, 225 (1863), where the Court stated:

". . . All public officers are agents, and their official powers are fiduciary. They are trusted with public functions for the good of the public; to protect, advance and promote its interests, and not their own. And, a greater necessity exists than in private life for removing from them every inducement to abuse the trust reposed in them, as the temptations to which they are sometimes exposed are stronger, and the risk of detection and exposure is less. . . ."

As an example of the application of these principles, in *Ferle v. City of Lansing,* 189 Mich. 501 (1915), a suit was brought to enjoin a city from paying a bill for lumber delivered to its department of public works. However, a member of its board of police and fire commissioners was a stockholder, vice president and general manager of the firm that supplied the materials and the city charter provided that "No member of the city council nor any person holding any elective or appointive office under the city government shall be interested in any contract with the city, . . ." (p. 503) Despite the fact that the lumber was sold to the city at a lower price than it could have been purchased elsewhere, the Michigan Supreme Court held that the transaction was void, stating, "Nor will the courts inquire whether the terms of the contract are fair or unfair. The purpose of the prohibition is not only to prevent fraud, but to cut off the opportunity for practicing it." (p. 506)

Although the decision in the *Ferle* case was based upon a charter provision rather than public policy, the Court noted that "both are founded upon the same general principles." (p. 504)

In the same vein was *Woodward v. City of Wakefield,* 236 Mich. 417 (1926), in which the Court set aside a land contract entered into between the city and the mayor's wife and, in so deciding, stated:

> "It is the policy of the law to keep municipal officials far enough removed from temptation as to insure the exercise of their unselfish interest in behalf of the municipality." (p. 420)

Although *Ferle* and *Woodward* involved the application of charter provisions, these cases also indicated the conformity of charter provisions with common law principles. In any event the basic rule was summarized in an opinion rendered by then Attorney General Grant Fellows on February 3, 1916 (p. 353-354) as:

> ". . .It is a fundamental rule of public policy that no public official shall be personally concerned in any contract or agreement with a municipality or political subdivision of which he is an officer. . . ."

In addition to the existence of common law rules in this area, numerous statutes pertaining to possible conflicts of interest by various public officials have been enacted by the legislature.

As to members of county boards of supervisors, Section 30(3) of Act 156, P.A. 1851, as last amended by Act 211, P.A. 1966 (C.L. '48 § 46.30; M.S.A. Cur. Mat. § 5.353, p. 300), provides:

> "No member of such board of supervisors shall be interested directly or indirectly in any contract or other business transaction with any such county, or any board, office or commission thereof, during the time for which he is elected or appointed, nor for 1 year thereafter. This prohibition is not intended to apply to appointments or employment by the county, or its officers, boards, committees or other authority, which appointments and employment shall be governed by the provisions of section 30a of this act."

Under the former provision the sale by a member of the board of supervisors of merchandise to a home operated by the county was prohibited (O.A.G. 1941-42, No. 18865, p. 66). And it was also stated by the Attorney General that the language of this section is inclusive and admits of no apparent exception which would permit a member of the board of supervisors to do business with a board, office or commission of the county during his term or for one year thereafter. (O.A.G. 1943-44, No. 0-515, p. 309)

As to members of village councils, Section 6 of Chapter V of Act 3, P.A. 1895, (C.L. '48 § 65.6; M.S.A. 1961 Rev. Vol. § 5.1269) provides:

> "No member of the council, nor any officer of the corporation, shall be directly or indirectly interested in any contract or service made by, or to be performed for the corporation: Provided, That this shall not prevent officers receiving compensation authorized by this act. Any violation of the provisions of this section shall work forfeiture of the office, and on proof thereof the council may declare the office vacant."

Similarly Chapter VIII, Section 16 of the Fourth Class Cities Act (Act 215, P.A. 1895) being C.L. '48 § 88.16; M.S.A. 1949 Rev. Vol. § 5.1712, provides:

> "No member of the council or any officer of the corporation shall be interested, directly or indirectly, in the profits of any contract job,

work or service (other than official services), to be performed for the corporation, and member of the council, or officer of any city, herein specified, offending against the provisions of this section, shall, upon conviction thereof, be fined not less than $500.00 nor more than $1,000.00, or be imprisoned in the county jail not less than 1 nor more than 6 months, or both, in the discretion of the court, and shall forfeit his office: *Provided,* That the provisions of this section shall not apply to any fourth class city now or hereafter having a population of 2,000 or less inhabitants if and when the governing body of said fourth class city shall have decided to do so by an unanimous vote of its members-elect and shall have stated the reasons therefor and made it a matter of public record, and when approved by a majority of the electors at any regular or special election."

Although there is no statutory or constitutional requirement that they do so, many home rule cities have conflict of interest provisions in their charters and these clauses are generally phrased in accordance with the terms of the Fourth Class Cities Act (Act 215, P.A. 1895, supra). In the absence of such provisions the common law rule would prevail.

Insofar as school boards are concerned, Section 969 of the School Code of 1955 (Act 269, P.A. 1955), as amended by Act 31, P.A. 1963, being M.S.A. 1965 Cum. Supp. § 15.3969, provides:

"It is unlawful for any member of a board of education to perform any labor for the school district except as provided in this act, or to sell or to rent any material or supplies to the school district in which he is a member of the board. This section shall not prohibit business transactions with corporations in which a board member owns less than 1/2 of the stock, or deposits of district funds in a bank of which a board member is an officer or director. This section does not prohibit any board member in a school district of less than 4,000 population from making total sales in any school year to the school district in an amount less than $500.00."

The clause that exempted deposits of school district funds in a bank of which a board member is an officer or director appearing in this section was added in 1963 by Act 31, P.A. 1963, after I had ruled that members of boards of education of any school district may not serve as director of a bank which is a depository for board funds. (O.A.G. 1961-62, No. 4032, p. 615 and O.A.G. 1963-64, No. 4032A, p. 38).

Also Section 122 of the Michigan Penal Code (Act 328, P.A. 1931) being C.L. 1948 § 750.122; M.S.A. 1962 Rev. Vol. § 28.317, provides:

"No trustee, inspector, regent, superintendent, agent, officer or member of any board or commission having control or charge of any educational, charitable, penal, pauper, or reformatory public institution of this state, or of any municipality thereof, shall be personally, directly or indirectly, interested in any contract, purchase or sale made for, or on account, or in behalf of any such institution, and all such contracts, purchases or sales shall be held null and void; nor shall any such officer corruptly accept any bribe, gift or gratuity whatever from any persons interested in such contract; and it is hereby made the

duty of the governor or other appointing power, upon proof satisfactory of a violation of the provisions of this section, to immediately remove the officer or employe offending as aforesaid; and the offender shall be guilty of a felony."

In *Consolidated Coal Co. v. Board of Trustees of the Michigan Employment Institution for the Blind,* 164 Mich. 235 (1910), it was held that a sale of coal to the Michigan Employment Institution for the Blind by a corporation in which one of the three trustees of the institution had an interest as a stockholder is void.

In addition to these statutes, Article IV, Section 10 of the Michigan Constitution of 1963 provides:

"No member of the legislature nor any state officer shall be interested directly or indirectly in any contract with the state or any political subdivision thereof which shall cause a substantial conflict of interest. The legislature shall further implement this provision by appropriate legislation."

This is a revision of Sections 7 and 25, Article V, of the former constitution of 1908 and was intended "to indicate clearly that persons who serve the state in elected or appointed positions shall not have substantial conflicting interests." (Address to the People by Members of the Convention, Official Record of Constitutional Convention, Vol. II, p. 3372).

The source of this constitutional provision was thoroughly reviewed in O.A.G. No. 4492, March 10, 1966, in which, after concluding that a member of the Board of Regents of the University of Michigan could not be directly or indirectly interested in any contract with a business organization dealing with the institution, I pointed out that while there was no question of the motives, integrity or devotion to the interest of the university by the board member nor any question of the invaluable contributions to the welfare of the university made by him, nevertheless he could not maintain his position as a regent while his company had such relationships with the university since these relationships were "inconsistent with the requirements of the Michigan Constitution relating to 'substantial conflict of interest.'" I then indicated the immediate necessity of legislative action to carry out the constitutional mandate set forth in Article IV, Section 10 of the Michigan Constitution providing "The legislature shall further implement this provision by appropriate legislation."

The legislature subsequently enacted Act 317, P.A. 1966,[1] the pertinent parts of which are its first three sections which read as follows:

"Section 1. As used in this act:

"(a) 'State officer' means a person whose office is created by the constitution or by legislative authority.

"(b) 'Government employee' means a person who is employed by the executive, legislative or judicial branch of state government, or any of its political subdivisions including any department, board, commission, educational or other institution or other agency of the state.

"Sec. 2. No state officer or government employee shall have a direct or indirect interest, financial or otherwise, in a contract with

[1] Effective March 10, 1967.

the state or any of its political subdivisions, or incur any obligation of any nature, which contract or obligation is in substantial conflict with the proper discharge of his duties in the public interest.

"Sec. 3. A substantial conflict of interest exists where a state officer or government employee:

"(a) Engages in a business transaction as a representative or agent of the state or any of its political subdivisions with a business entity in which he is a director, president, general manager or other similar executive officer, or owns directly or indirectly a substantial portion of the entity.

"(b) Accepts other employment or engages in a business or professional activity that will require him to disclose confidential information acquired by him in the course of his official duties. Members of a state agency, board or commission are prohibited from engaging in lobbying activities as a registered legislative agent while a member of the agency, board or commission."

Reconciliation of Common Law, Constitution and Various Statutes

The manner in which particular individuals in particular conflict of interest situations are affected by applicable law will depend upon the weight and construction given to each of the provisions cited above. Of overriding weight is, of course, the provisions of the Michigan Constitution which is the basic law of the state. Any statute or common law rule contradictory or repugnant to a constitutional provision must be stricken and nullified for, as held in *Township of Dearborn v. Dearborn Township Clerk,* 334 Mich. 673 (1952), our constitution is the fundamental law to which all must conform and its provisions are paramount.

Also to be considered is the rule of statutory construction that statutes in *pari materia* are to be compared and, if it is possible to do so by reasonable construction, they are to be construed so as to give effect to every provision of each one. (*City of Detroit v. Michigan Bell Telephone Company,* 374 Mich. 543 (1965)). However, if there is an irreconcilable conflict between new provisions and prior statutes relating to the same subject matter, the former, being a later expression of the legislature's intent, will control even though it does not contain a repealing clause. (*Metropolitan Life Ins. Co. v. Stoll,* 276 Mich. 637 (1936); *Port Engine & Thresher Co. v. Township of Port Huron,* 191 Mich. 590 (1916)).

As to the effect of Article IV, Section 10 of the Michigan Constitution, it is my opinion that the first sentence thereof is self-executing and fixes the standard of conduct which must be observed by members of the legislature and state officers. Such persons, according to this clause, "shall not be interested directly or indirectly in any contract with the state or any political subdivision thereof which shall cause a substantial conflict of interest." The fact that this section of the constitution also imposes the responsibility upon the legislature to "further implement this provision by appropriate legislation" does not confer upon this body any power to grant indulgences from observance of established standard of conduct. The responsibility of the legislature to further implement the constitutional provision relates to

enactment of such statutes as may prescribe penalties for breach of the standard of conduct or such other consequences that may result from a breach thereof as, for example, that a contract so entered into shall be voidable rather than void.

The recognized principles of law with respect to self-executing constitutional provisions is fully discussed by Justices Fellows and Bird in *Hamilton v. Secretary of State,* 227 Mich. 111 (1924). After pointing out that "The tendency of modern decision is towards holding constitutional provisions self-executing," (p. 115) Justice Fellows quoted the following from Cooley's Constitutional Limitations (7th ed.), p. 121, 122 with approval:

> " 'A constitutional provision may be said to be self-executing if it supplies a sufficient rule by means of which the right given may be enjoyed and protected, or the duty imposed may be enforced.'
>
> * * *
>
> " 'Perhaps even in such cases, legislation may be desirable, by way of providing convenient remedies for the protection of the right secured, or of regulating the claim of the right so that its exact limits may be known and understood; *but all such legislation must be subordinate to the constitutional provision, and in furtherance of its purpose, and must not in any particular attempt to narrow or embarrass it.*' " (Emphasis supplied) (p. 117)

Although not in accord with other conclusions of Justice Fellows in the *Hamilton* case, supra, Justice Bird had no quarrel with his conclusion that the constitutional provision involved in that case (Article XVII, Section 2 of the Michigan Constitution of 1908) was self-executing.

In addition, the debates of the framers of the 1963 Constitution reveal their intent to make this provision self-executing. This is indicated by the following excerpts from the submission of reasons in support of the proposal given by Mr. Hoxie, chairman of the committee on legislative powers:

> "The prohibition against conflict of interest is self executing in form, but flexibility is given so that the legislature may pass suitable legislation.
>
> "The committee does not feel that a detailed prohibition had to be written concerning conflicts of interest and that a self executing statement of principle is sufficient."
>
> Official Record, Constitutional Convention, Vol. II, p. 2361.

It may be noted, however, that the constitution does not inhibit the legislature from setting a higher standard than that prescribed in the constitution or from requiring persons not designated therein from adhering to a higher, lesser or the same standard.

Persons Covered by Applicable Law

In responding to your questions, it must first be determined which provisions are applicable to each classification of public officials denoted in your letter; namely, members of school boards, members of city councils, members of village councils and members of county boards of supervisors.

In my opinion the framers of the constitution did not intend the conflict of interest provision of the constitution discussed above (Article IV, Section 10 of the Michigan Constitution of 1963) to apply to any of these local

officials except members of school boards, but rather intended that it apply to members of the legislature and such state officers whose functions involve administration and enforcement of state laws on a state-wide basis including members of school boards.

The term "state officer," it is to be noted, can have various meanings and its definition in a particular case is dependent upon the context in which it appears. As stated by Justice Smith in *Schobert v. Inter-County Drainage Board,* 342 Mich. 270 (1955) at p. 280:

> "On the one hand, it is clear that the term 'State officer' is so broad as to embrace the literally hundreds of officials within the State who perform in varying degrees, functions having their authorization in constitutional provisions and statutory enactments applicable to the State at large or partaking to some extent of the police power of the State. Thus, in a sense, and to the extent that the performance of their official functions involves the administration of State laws, county and municipal officials, prosecutors, judges, treasurers, police and school officials, drain commissioners and hosts of others are all State officials."

And, at p. 281-282:

> ". . . in one sense of the term a State officer is one who exercises a portion of the sovereign powers on a State-wide basis, normally from the seat of government, such as the attorney general, while in another, a State officer is any official whatsoever whose duties embrace the implementation of sovereign policy, however expressed, such as the village constable. (citing authorities) From such dichotomy we derive no comfort, however, for it is equally clear that the term 'State officer' will vary in content with its use and context, and that the same office-holder may be an officer of the State for one purpose and not for another. Thus we might well hold that a county, township, or municipal election official is a State officer as concerns the duty of State officers to administer constitutional rights equally to all races (e.g., *Mitchell v. Wright,* 69 F. Supp. 698) while at the same time denying that he is a State officer to the extent that a vacancy in his office could only be filled by the governor by and with the advice and consent of the senate."

My conviction that the term "state officer" in the constitutional provision at hand was not intended to include local officials except members of school boards is based upon several factors.

In the first place, during the debates of the framers of the Constitution, Mr. Hoxie, chairman of the committee on legislative powers, referring to the proposal which, with minor changes, was ultimately adopted by the people, stated:

> "The committee is of the opinion that it should be clearly expressed that *persons who serve the state in elected or appointed positions* should not have conflicting interests." (Emphasis supplied)

Official Record, Constitutional Convention, Vol. II, p. 2361.

Secondly, this position is supported by authority. As stated in 67 C.J.S. "Officers" §3, p. 104, "Officers with respect to the public body for which

they act may be classified as national or federal, state, county, municipal, or otherwise." And, under 81 C.J.S. "States" §52, p. 970, there appears the following statement:

> " 'State officers,' in the more restricted sense of that term, have been distinguished from those of county, district, or towns, the usual ground of distinction being that the powers and duties of the state officer are coextensive with the state and those of the other officer coextensive only with the political subdivision he serves."

However, for further reference in dealing with persons subject to Act 317, P.A. 1966, supra, it must be noted that this same authority recognizes that:

> "The term 'state officer' is one of varying import, and may or may not be equivalent to 'officer of the state.' In the broadest sense of the term all public officers holding office in the state are 'officers of the state,' even though not a 'state officer' in the stricter sense of the latter term . . ."
>
> 81 C.J.S. "States" §52, p. 970.

As to members of boards of education, it is fundamental that in Michigan, education is not a matter of local concern, but belongs to the state at large (*Sturgis v. County of Allegan,* 343 Mich. 209 (1955)), and that the establishment and maintenance of public schools are primarily functions of the state rather than of any municipality or any other local unit of government (*Ira School District No. 1 Fractional v. Chesterfield School District No. 2,* 340 Mich. 678 (1954)). So, in *Jones v. Grand Ledge Public Schools,* 349 Mich. 1 (1957), it was held that the legislature is vested with complete authority to determine the powers and duties of school officials chosen in accordance with the law. Hence it must be concluded the members of school boards, as distinguished from members of boards of local units of government, are "state officers" within the contemplation of Article IV, Section 10 of the Michigan Constitution.

On the other hand, it is clear that the definition of "state officer" in Act 317, P.A. 1966, supra, indicates the intent of the legislature to encompass members of school boards as well as members of city councils, village councils and county boards of supervisors. This intent is demonstrated by the fact that Section 1 of Act 317 defines a "state officer" as "a person whose office is created by the constitution or by legislative authority" and a "government employee" as "a person who is employed by the executive, legislative or judicial branch of state government, or any of its political subdivisions including any department, board, commission, educational or other institution or other agency of the state." This language evinces an intent to include within the ambit of the law every person who is elected or selected to serve the public in a public capacity.

Situations Involving Conflict of Interest

Having determined that each of the officers referred to in your request for this opinion is subject to some provision of law relative to possible conflict of interest, we turn next to the situations described with a view to advising you of the effect of the applicable law in particular situations.

In this respect, since the law applying to members of school boards has a different basis than that applicable to members of the units of local government, it will be helpful to treat them separately.

(a) Members of school boards.

As I have already indicated, school board members are "state officers" within the meaning of Article IV, Section 10 of the Michigan Constitution of 1963 and hence may not "be interested directly or indirectly in any contract with the state or any political subdivision thereof which shall cause a substantial conflict of interest."

Whether a particular contract is one which involves a *substantial* conflict of interest within the meaning of Article IV, Section 10, is a matter for the courts rather than the legislature to determine. The people have stated their position on this point and any question involving definition of the term "substantial" must be determined by the courts in light of the generally understood meaning of this term and the context in which it was used.

A similar question involving definition of this term was also discussed in Opinion No. 4492 of March 10, 1966, supra, in which, after reviewing the debates of the framers of the Michigan Constitution of 1963 as well as legal authority, I concluded that "the word 'substantial' as it is used by the people in Article IV, Section 10, means material as opposed to trivial, and that the conflict of interest must involve a pecuniary or beneficial interest."

Such being the case, if a person were to serve simultaneously as a bank or savings and loan association officer or director and as a member of a school board, he would be in violation of the constitutional prohibition (see O.A.G. 1913, p. 306). If, rather than being an officer or director of the financial institution, he were an employee, the determination of whether a substantial conflict of interest existed would depend upon the nature of his employment and, particularly, whether there would be any direct or indirect benefit of a substantial nature to him resulting from the arrangement.

In this case the result would be the same whether the contract is with the particular public body, with the state or with any of its political subdivisions. The constitution allows for no exception in this respect.

If a school board member were to engage in any business transaction involving his board, the state or any of its political subdivisions and his financial institution, the result would be the same; that is, if he were an officer or director of the financial institution there would be a substantial conflict of interest *per se* whereas, if he were an employee, the result would depend upon the nature of his employment and the extent of benefit accruing to him by virtue of his public office. The taint of substantial conflict of interest, it will be noted, focuses upon the association with the financial institution or the benefit derived from the contract because the mere fact of holding the office as a board member is sufficient to create the conflict if the person holding the office has a substantial interest at the other end of the bargaining table.

The effect of this constitutional prohibition, it must be noted, is at variance with those provisions of Section 969 of the School Code of 1955 (Act 269, P.A. 1955, supra). The portion of Section 969 which is repugnant to the constitution, and therefore invalid, is:

> "This section shall not prohibit business transactions with corporations in which a board member owns less than 1/2 of the stock, or deposits of district funds in a bank of which a board member is an officer or director. This section does not prohibit any board member in a school district of less than 4,000 population from making total sales in any school year to the school district in an amount less than $500.00."

Thus the two opinions of my office (O.A.G. 1961-62, No. 4032, p. 615 and O.A.G. 1963-64, No. 4032A, p. 38) having been based upon the *Overyssel* case, supra, as authority, are still applicable.

(b) Members of Boards of Local Units of Government.

Members of boards of local units of government, as indicated above, while not covered by the constitutional provision, are subject to the provisions of Act 317, P.A. 1966, supra. Section 2 of this act is declaratory of the common law and constitutional principles with respect to the obligation of public officials not to engage in any outside interest which might conflict with their public duties. Having restated this broad policy as applicable to these officials, the legislature, in Section 3 thereof, indicated two instances in which it may be conclusively presumed that a substantial conflict of interest exists. There may, however, be other instances which might also give rise to the existence of a substantial conflict of interest.

Since those conflict of interest statutes, other than Act 317, which pertain to members of boards of local government units prohibit the same kinds of transactions and are phrased in the same general terms, there is no contradiction between these various statutes and Act 317. However, sanctions imposed by these other statutes are legally binding and effective; these would include the penalty of forfeiture of office which is provided for in Act 3, P.A. 1895, supra, dealing with village councils and such criminal penalties as are imposed upon members of councils of fourth class cities who violate the provisions of Act 215, P.A. 1895, supra.

With respect to members of boards of local units of government, therefore, the answer to your question (a) is that a substantial conflict of interest does exist when such a person simultaneously serves as officer or director of a financial institution. (Section 3(a) of Act 317). Whether the same would be true of an employee would depend, as in the case of a school board member, upon the interest of the particular employee. (Section 2 of Act 317).

As to question (b), which differs from question (a) in that the contract referred to is with the State or a different political subdivision of the State, neither of which he directly represents, a substantial conflict of interest need not necessarily exist, although, depending upon the particular circumstances of a particular case, it is possible that a conflict may be present. The reason for the difference in result is that, under these circumstances, it is unlikely that there will be a "substantial conflict with the proper discharge of his duties" as required by Section 2 whereas the reverse is bound to be true if the contract were with the governmental unit that he serves.

Answering question (c), if the board member engages in any business transaction involving that board and his financial institution, a conflict of interest does exist where he is a director, president, general manager or

other similar executive officer of the financial institution. But if he were simply an employee of the financial institution having a position other than those, the extent of his involvement with the financial institution as well as his involvement with the particular business transaction would determine in particular cases whether a conflict is present.

As to question (d), which differs from question (c) only in the fact that the board member is engaging in a business transaction with the state or a political subdivision of the state other than that which he represents, and in such cases, there may not be a conflict of interest, although under particular circumstances one could arise.

As to the final question of whether the public board member who accepts other employment or engages in a business or professional activity that would require him to disclose confidential information acquired by him in the course of his official duties as a member of the public board, Section 3(b) of Act 317 makes it apparent that there would be a substantial conflict of interest in all such cases.

FRANK J. KELLEY,
Attorney General.

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SCHOOLS: Districts — Powers of board of education.
LABOR: Compulsory arbitration — public employees.

Boards of education are without lawful authority to include in their master contract with employees a clause providing for compulsory arbitration.

No. 4578 May 26, 1967.

Hon. Gilbert E. Bursley
State Senator
The Capitol
Lansing, Michigan

You have requested my opinion on the following question:

> Do boards of education have lawful authority to include in their master contract with representatives of their employees a clause calling for compulsory arbitration?

Act 269, P.A. 1955, as amended, 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.

Section 2 of the School Code of 1955 provides that school districts shall be organized and conducted as primary school districts, school districts of the fourth class, school districts of the third class, school districts of the second class and school districts of the first class. In addition, Michigan has a limited number of school districts that were created by special or local acts of the legislature. In this regard, such districts, pursuant to Section 351 of the School Code of 1955, are made subject to the provisions of Chapter 2 of the School Code of 1955, except as to those matters specifically or by necessary implication provided for in the appropriate special or local act.