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.

670526.1

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.

School districts possess such powers only as the legislature expressly or by reasonably necessary implication has granted to them. *Senghas v. L'Anse Creuse Public Schools,* 368 Mich. 557 (1962).

The legislature has entrusted the government of school districts to boards of education created in the various provisions of the School Code of 1955 or the appropriate special or local act. Boards of education have such powers only as are conferred expressly or by implication by the legislature. *Jacox v. Board of Education, Van Buren Consolidated School District,* 293 Mich. 126 (1940).

Sec. 569 of the School Code of 1955 empowers the board of education to contract with qualified teachers and the statute specifies that the contract shall state the wages agreed upon. In addition, Sec. 574 of the School Code of 1955 authorizes boards of education to employ such assistants and employees as may be necessary and to fix their compensation. I find no express grant of authority in the School Code of 1955 empowering boards of education to agree to compulsory arbitration.

Nor can such authority be found in Act 336, P.A. 1947, as last amended by Act 379 and Act 397 of the Public Acts of 1965, being C.L. 1948, §423.201 et. seq.; M.S.A. 1960 Rev. Vol., 1965 Cum. Supp. and Current Material, §17.455(1) et. seq., which provides for the mediation of grievances of public employees. Under Section 2 of the act public employees of school districts are covered.

Section 15 of Act 336, P.A. 1947, as added by Act 379, P.A. 1965, provides:

> "A public employer shall bargain collectively with the representatives of its employees as defined in section 11 and is authorized to make and enter into collective bargaining agreements with such representatives. For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract, ordinance or resolution incorporating any agreement reached if requested by either party, *but such obligation does not compel either party to agree to a proposal or require the making of a concession.*" (Emphasis supplied)

While the legislature has imposed a duty upon boards of education to bargain collectively with the representatives of its employees under the act, it is abundantly clear that the board of education is not required by that act to agree to a proposal or be compelled to make a concession. It must follow that authority to enter into compulsory arbitration cannot be implied in such act.

The employment of public employees, including school employees, and their wages, hours and working conditions, rests in the discretion of the public employer. *Norwalk Teachers' Association v. Board of Education of City of Norwalk,* 83 A. 2d 482 (Conn. 1951); *Mugford, et al v. Mayor and City Council of Baltimore, et al,* 44 A. 2d 745 (Maryland 1946). It has been held that such discretion cannot be delegated or abdicated. *Mugford,*

et al v. Mayor and City Council of Baltimore, et al, supra. Thus, a city was held without lawful authority to enter into a contract with a labor organization representing its employees which provided for the arbitration of vacation rights of its employees. *Fellows, et al v. LaTronica,* 377 Pac. 2d 547 (Colo. 1962).

However, there is authority for the proposition that a state legislature may provide by law for public employees to enforce their rights to collective bargaining by arbitration. *City of Manchester v. Manchester Teachers Guild, et al,* 131 A. 2d 59 (N.H. 1957).

An examination of the provisions of the School Code of 1955, supra, and Act 336, P.A. 1947, supra, compels the conclusion that the legislature has not in either act conferred authority, express or implied, by which the boards of education could agree to compulsory arbitration.

Therefore, it is the opinion of the Attorney General that boards of education are without lawful authority to include in their master contracts with representatives of their employees a provision for compulsory arbitration.

FRANK J. KELLEY,
Attorney General.

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APPEALS: Cost of Appellate Counsel and Transcript.

Except in certain exceptional cases where the appellant has been convicted for crimes perpetrated while in the actual custody of the Michigan Corrections Commission.

As the basic unit in the administration of criminal justice, the county must bear the expenses of appellate counsel and transcripts provided for indigent defendants under G.C.R. 1963, 785.4(1).

The state should reimburse the county for counsel, transcript and other costs in appeal when the court has ordered these to be paid for a defendant convicted of a crime while a prisoner in a state penal institution, the state having assumed a particular responsibility in this area.

No. 4588 June 12, 1967.

Mr. George Washington
Director
Department of Administration
Lewis Cass Building
Lansing, Michigan 48913

The question has arisen as to whether the state is required to reimburse counties for the costs involved in making an appeal. Article I, §20 of the Constitution of 1963 states that:

> "In every criminal prosecution, the accused shall have the right . . . to have an appeal as a matter of right; and in courts of record, when the trial court so orders, to have such reasonable assistance as may be necessary to perfect and prosecute an appeal."