From the foregoing it appears clear that the legislature intended that the sole exception to the prohibition on corporate contributions for election expenses be limited to those corporations formed primarily for political purposes. The term does not include the sundry social, civic and professional corporations which, while having an interest in the welfare of the community, are not formed primarily to influence the policies or the administration of the government. Accordingly, it is my opinion that the Greater Grand Rapids Chamber of Commerce may not make contributions to the campaign for the favorable passage of a proposal in a school millage election.

FRANK J. KELLEY,
Attorney General.

680305.1

FEDERAL: Radio transmission.
FEDERAL: Enforcement of federal laws by state police officers.

The federal government has not so preempted the field of radio transmission and reception as to exclude state and local governments from the exercise of police powers which do not conflict with specific federal regulations in this area.

The federal government has preempted the licensing and assignment of radio frequencies and the state cannot regulate this activity.

Peace officers of the state may arrest for violations of federal laws and regulations although offenses against the federal sovereignty may only be tried in a federal court.

No. 4631 March 5, 1968.

Honorable Emil Lockwood
State Senator
The Capitol
Lansing, Michigan

You have requested my opinion on the following five questions concerning the rights and powers of the State in the regulation of radio transmission and reception:

1. Does the Federal Government have exclusive control in the regulation of radio transmission and reception?

2. If not, then what are the prerogatives of the state in the matter of radio transmission and reception control?

3. Can the state require that radio transmitters and receivers, capable of transmitting on or receiving messages from law enforcement radio frequencies be either registered or licensed by the state?

4. Can the state through its officers delegate to law enforcement agencies the power to enforce any Federal legislation or regulation that may exist to prohibit the interference with or reception of law enforcement radio transmissions?

5. Can the federal government through its officers delegate to law enforcement agencies of a state the power to enforce any federal legislation or regulation that may exist to prohibit the interference with or reception of law enforcement radio transmissions?

Since my response to your questions must be made within the context of general rules relative to the State vis-a-vis the Federal government, a preliminary resumé of the basic concepts of this relationship would be helpful.

The supremacy of the Federal government within its sphere is recognized in the United States Constitution, Article VI, Section 2, which provides:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

It is thus apparent that, in adopting the United States Constitution, the people of each of the several states surrendered certain rights and powers to the central government and, commensurately, diminished the sovereign powers of the State to the extent that such powers were vested in the Federal government. *R. C. Tway Coal Co. et al. v. Glenn et al.*, 12 F. Supp. 570 (1935). As a result, when the Federal government acts within the limits conferred by the United States Constitution, its action supersedes the powers of the States, *Pacific Coast Dairy, Inc. v. Dept. of Agriculture of California*, 318 U.S. 285 (1943), and a state statute, a local enactment, regulation or city ordinance, even if based upon valid police powers of a State, must yield where it is in direct conflict with powers exercised by the Federal government under the Constitution. *United States v. City of Chester et al.*, 144 F. 2d 415 (1944); *Pritchard v. Downie*, 201 F. Supp. 893; affirmed 309 F. 2d 634 (1962).

As summarized in *81 C.J.S., States*, § 7, p. 872:

"* * * Whatever the law of the state, whether embodied in its constitution, statutes, or judicial decisions, the provisions of the federal Constitution and laws are supreme, and the federal Constitution and all laws enacted pursuant to the powers conferred by it on congress are the supreme law of the land to the same extent as though expressly written into every state law. * * *."

Conversely, a state law is valid if, in its terms or in practical administration, it does not conflict with a Federal law or infringe on its policy in an area in which congress has authority to legislate. *Quaker Oats Company v. City of New York*, 68 N.E. 2d 593 (N.Y. 1946); affirmed 331 U.S. 787, 67 S. Ct. 1314 (1947), sub nom *Hill Packing Co. v. City of New York.* Whether a state law is valid depends upon whether it stands as an obstruction to the accomplishment and execution of the purposes and objectives of congress. *Cloverleaf Butter Company v. Patterson, Commissioner of Agriculture and Industries of Alabama, et al.*, 315 U.S. 148 (1942).

Turning now to the extent to which the Federal government has preempted the field of radio transmission and reception, the source of congressional concern is derived from that potent phrase in Article I, Section 8 (3) of the United States Constitution which delegates to congress the power "To regulate Commerce with foreign Nations, and among the several States, * * *." Using this extensive power, congress has enacted the Communications Act of 1934, 48 Stat. 1063 et seq.; 47 U.S.C.A. § 151 et seq; and it has been judicially determined that the regulatory provisions of this statute are a reasonable exercise of congressional power, *Pulitzer Pub. Co. v. Federal Communications Commission,* 94 F. 2d 249 (1937).

Tracing the origins and purposes of the Communications Act, the United States Supreme Court in *National Broadcasting Co., Inc. v. United States,* 319 U.S. 190 (1942), pointed out that federal regulation of radio transmission began with the Wireless Ship Act of June 24, 1910, 36 Stat. 629, which, in effect, required ships to be equipped with radio communication apparatus to be in charge of a skilled operator. Two years later the United States ratified the first international radio treaty, 37 Stat. 1565, and, in fulfillment of our nation's obligations thereunder Congress enacted the Radio Act of August 13, 1912, 37 Stat. 302. This statute forbade operation of radio apparatus without a license from the Secretary of Commerce and Labor and allocated certain frequencies for governmental use.

Within a decade thereafter and as a result of further technological development, the first broadcast stations were established and by 1923 there were several hundred radio stations throughout the United States. In fact the number of such stations increased so rapidly that the situation became chaotic because broadcasters were using any frequency they wished regardless of interference caused to others. In order to be heard, some stations changed their frequencies and increased their power so that, in the words of the Supreme Court in *National Broadcasting Co., Inc. v. United States,* supra, "[w]ith everybody on the air, nobody could be heard." (p. 212) The Court pointed out the need for further control of the air waves in the following terms:

> "The plight into which radio fell prior to 1927 was attributable to certain basic facts about radio as a means of communication—its facilities are limited; they are not available to all who may wish to use them; the radio spectrum is simply not large enough to accommodate everybody. There is a fixed natural limitation upon the number of stations that can operate without interfering with one another. (footnote omitted)" *National Broadcasting Co., Inc. v. United States,* supra, page 213.

Consequently, having failed in its attempt to resolve conflicting use of radio frequencies by self-regulation, Congress enacted the Radio Act of 1927, 44 Stat. 1162, the basic provisions of which were subsequently incorporated into the Communications Act, supra.

Section 1 of the Communications Act of 1934, being 47 U.S.C.A. § 151, states its purposes to be that of "regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient,

Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, * * *" [as well as other purposes relating to national defense and promotion of safety of life and property].

Pursuant to powers vested in the Federal Communications Commission by the Communications Act of 1934, supra, the Commission has promulgated comprehensive rules and regulations governing the licensing and operation of public safety radio services which are incorporated in 47 C.F.R., Chapter 1, Part 89, et seq. The regulations are, in their own words, "designed to provide a service of radio communication essential either to the discharge of non-Federal governmental functions or to the alleviation of an emergency endangering life or property." 47 C.F.R., Chapter 1, § 89.1(b).

Section 89.53(a) of 47 C.F.R., Chapter 1, requires the filing of an application to install and operate transmitting equipment for radio use. If the application is approved, the Federal Communications Commission will issue a license for a term of one to five years depending upon the scheduling of renewed application. 47 C.F.R. § 89.73(a)(1)(2). The successful applicant is then assigned a frequency which will not cause harmful interference and the applicant must equip the transmitter with a device that will automatically prevent excessive modulation. 47 C.F.R. § 89.109(c).

In view of the extensive scope of the exercise of federal control of the area of radio communication, it might first appear that the field has been entirely preempted and that there is therefore no room for the exercise of any state regulation. But this conclusion is not entirely accurate, as a brief review of relevant court decisions will reveal.

In a comparatively early case insofar as the history of radio and law governing its regulation is concerned, a federal court noted that:

> " * * * Radio communications are all interstate. This is so, though they may be intended only for intrastate transmission; and interstate transmission of such communications may be seriously affected by communication intended only for intrastate transmission. Such communications admit of and require a uniform system of regulation and control throughout the United States, and Congress has covered the field by appropriate legislation. * * *."

Whitehurst v. Grimes, 21 F. 2d 787 (1927)

Later, in *U.S. v. Betteridge,* 43 F. Supp. 53 (1942), another federal court cited *Whitehurst* with approval. In the *Betteridge* case unlicensed operators of unlicensed mobile radio stations were transmitting radio signals that could only be heard a short distance away although these signals were picked up by a coast guard vessel on Lake Erie. The operators were convicted under the Communications Act of 1934 and the Court therein stated on page 55:

> "It is needless to go into a lengthy dissertation on the inherent natural characteristics of radio transmission to arrive at the inescapable conclusion that all transmission of energy, communications or signals by radio, either use an interstate or foreign channel of trans-

mission or so affect interstate or foreign channels as to require the regulation of their use by licensing or otherwise if the announced purpose of this section, [47 U.S.C.A. § 301] i.e., the retention of control in the United States of all channels of interstate and foreign radio communication, is to be carried out effectively. * * *."

Then, in *Allen B. Dumont Laboratories Inc. et al. v. Carroll*, 184 F. 2d 153 (1950), the federal court had before it a question of the validity of a regulation of the Pennsylvania State Board of Censors which required all motion picture films for broadcast be submitted in advance for censorship purposes. After first determining that the broadcast of television programs falls within the definition of radio transmission so as to be subject to the Communications Act of 1934, the Court stated that:

"* * * it is clear that Congress has occupied fully the field of television regulation and that that field is no longer open to the States. Congress possessed the constitutional authority to effect this result. * * *." (page 156)

Despite these decisions, Rhyne, *Municipal Law* (1957), page 589, takes the position that ordinances providing for the elimination of interference to radio and television programs may be enacted by municipal corporations upon the grounds that the interference results in annoyance to the public and impedes fire and police duties. The author notes that cities have a vital interest in civilian defense and they may therefore enact police power ordinances to prevent radio interferences which may impede local civilian defense activities. Mr. Rhyne's position appears to have been supported by the United States Supreme Court in *Head, doing business as Lea County Publishing Co., et al. v. New Mexico Board of Examiners in Optometry*, 374 U.S. 424 (1963), which involved a New Mexico statute that, in addition to many other regulations, prohibited optometrists from price advertising by radio. This statute, the Court held, did *not* impose a constitutionally prohibited burden upon interstate commerce and in so holding, the Court said:

"* * * The nature of the regulatory power given to the federal agency convinces us that Congress could not have intended its grant of authority to supplant all the detailed state regulation of professional advertising practices, particularly when the grant of power to the Commission was accompanied by no substantive standard other than the 'public interest, convenience, and necessity.' * * *.

"* * *.

"Finally, there has been no showing of any conflict between this state law and the federal regulatory system, or that the state law stands as an obstacle to the full effectiveness of the federal statute. No specific federal regulations even remotely in conflict with the New Mexico law have been called to our attention. The Commission itself has apparently viewed state regulation of advertising as complementing its regulatory function, rather than in any way conflicting with it. As in *Colorado Anti-Discrimination Comm'n v. Continental Air Lines, Inc.*, 372 U.S. 714, at 724, we are satisfied that the state

statute 'at least so long as any power the [Commission] may have remains "dormant and unexercised," will not frustrate any part of the purpose of the federal legislation.' * * *." (pages 431, 432)

Also, in *City of Muskegon Heights v. Wilson,* 363 Mich. 263 (1961), where the city sought to enjoin the operation of a commercial broadcasting station in a district zoned for single family residences, the defendant contended that the matter rested solely within the jurisdiction of the Federal Communications Commission and the Court tersely brushed this contention aside, stating:

"* * * The question before us is one of zoning, a province of the local government." (page 269)

A federal court in *Kroeger v. Stahl, et al.,* 248 F. 2d 121 (1957), also held that the provisions of the Communications Act of 1934, supra, does not preclude states from exercising their police powers in the use of land and buildings on the theory of interference with interstate commerce. In so holding the Court confirmed that:

" 'In conferring upon Congress the regulation of commerce, it was never intended to cut the States off from legislating on all subjects relating to the health, life, and safety of their citizens, though the legislation might indirectly affect the commerce of the country. Legislation, in a great variety of ways, may affect commerce and persons engaged in it without constituting a regulation of it, within the meaning of the Constitution.' Sherlock v. Alling, 1876, 93 U.S. 99, 103, 23 L. Ed. 819; and

" 'The principle is thoroughly established that the exercise by the state of its police power, which would be valid if not superseded by federal action, is superseded only where the repugnance or conflict is so "direct and positive" that the two acts cannot "be reconciled or consistently stand together".' Kelly v. State of Washington, 1937, 302 U.S. 1, 10, 58 S. Ct. 87, 92, 82 L. Ed. 3." (page 123)

Since the quoted language is applicable to the exercise of the state police power over radio communication, it constitutes a fair summarization of the answer to your first question.

You have also sought my advice on the question of the extent to which state and local officials may enforce federal statutes and regulations.

As stated in 4 Anderson, *Wharton on Criminal Law and Procedure,* § 1483, pp. 37, 38 (1957):

"The District Courts of the United States have original jurisdiction, exclusive of the courts of the several states, of all offenses against the laws of the United States. Neither the federal courts nor the state courts may be given jurisdiction over offenses exclusively against the government of the other. Federal courts have no jurisdiction of crimes against the sovereignty of any state, and state courts have no jurisdiction of crimes against the sovereignty of the United States.

"One act may constitute an offense against both sovereignties, and in such a case both the federal and state courts have jurisdiction of

the offense, unless the Federal Constitution or an act of Congress gives exclusive jurisdiction to the federal courts. * * *."

But the fact that the Federal District Court has exclusive jurisdiction to try offenses against the laws of the United States does not necessarily impede state and local officials from assisting in their enforcement. In fact 18 U.S.C.A. § 3041 1967 Cum. Annual Pocket Part, page 14, specifically authorizes such cooperation in the following terms:

> "For any offense against the United States, the offender may, by any justice or judge of the United States, or by any United States commissioner, or by any chancellor, judge of a supreme or superior court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate, of any state where the offender may be found, and at the expense of the United States, be arrested and imprisoned, or released as provided in chapter 207 of this title, as the case may be, for trial before such court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the office of the clerk of such court, together with the recognizances of the witnesses for their appearances to testify in the case. As amended June 22, 1966, Pub. L. 89-465, § 5(a), 80 Stat. 217."

In fact in *United States v. Bumbola,* 23 F. 2d 696 (1928), it was held that a state police officer has a duty to arrest without warrant any person committing an offense against the United States in his presence.

However, as to this provision, *8 Moore's Federal Practice,* Sec. 3.03(1), pp. 3, 4, notes:

> "* * * Actually, it is intended that these local officers act primarily in emergencies; very few in fact conduct an appreciable number of federal commitment proceedings. * * *."

Addressing your questions in the order put, and by way of summarization, it is my opinion that:

1. The federal government has not so fully preempted the field of radio transmission and reception as to exclude state and local governments from the exercise of police powers which are not directed toward the regulation of commerce and may enforce such prohibitions by appropriate action.

2. This question has been answered by my answer to question 1.

3. Because the federal government has preempted the licensing and assignment of radio frequencies, the state cannot regulate this area and therefore cannot require that radio transmitters and receivers be registered or licensed.

4. Peace officers of the state may enforce violations of federal laws and regulations and consequently the state may delegate to such law enforcement agencies the power to enforce federal legislation or regulations. However, offenses against the federal sovereignty may only be tried in a federal court.

5. As my answer to question 4 indicates that state and local law enforcement officers already have been delegated such powers by 18 U.S.C.A § 3041, no additional response is required.

FRANK J. KELLEY,
Attorney General.

680306.2

SCHOOLS: Powers of board of education over construction contracts.

LABOR: Prevailing wage clause in construction contracts of school districts.

Board of education of second class school district is lawfully authorized to insert prevailing wage clause in school construction contract executed in behalf of district.

No. 4371 March 6, 1968.

Dr. Ira Polley
Superintendent of Public Instruction
Lansing, Michigan

You have requested my opinion on the following question:

"Does the Grand Rapids Board of Education have legal authority to insert in their construction contracts a clause requiring that contractors pay their laborers the prevailing wage in the Grand Rapids area as determined by the United States Department of Labor?"

Article VIII, Section 2 of the 1963 Michigan Constitution commands the legislature to provide for a public elementary and secondary school system. Act 269, P.A. 1955, as amended,[1] hereinafter referred to as the School Code of 1955, has established various types of school districts, generally by designation of a particular class, and entrusted their government to boards of education. Boards of education have only such powers as are expressly or impliedly conferred upon them by statute. *Jacox v. Board of Education, Van Buren Consolidated School District,* 293 Mich. 126, 128 (1940).

Sections 26, 77 and 113 of the School Code of 1955 empower boards of education to erect or build and equip such buildings in primary, fourth and third class school districts respectively. Sections 154 and 192 of the School Code of 1955 grant boards of education authority to "erect and maintain or lease all buildings" in second and first class school districts respectively. The legislature has, in clear and unambiguous terms, conferred authority upon boards of education to enter into construction contracts.

The powers of the board of education of the School District of the City of Grand Rapids to construct buildings must be sought in Section 154 of the School Code of 1955 since the school district of the City of Grand

[1] C.L.S. 1961, § 340.1 et seq.; M.S.A. 1959 Rev. Vol. § 15.3001 et seq.