

than now authorized by the respective statutes which govern the organization and management of such institutions.'” (Emphasis supplied.) (M.C.L.A. § 487.751; M.S.A. 1957 Rev. Vol. § 23.182).

Construing the usury statute exemption and the specific statute exempting the Federal Housing Administration mortgages from laws prescribing or limiting interest rates upon loans or advances of credits results in the inevitable conclusion that the Federal Housing Administration mortgages are not subject to the usury statutes of this state.

It is clearly the intent of the Legislature to exempt from the usury statutes loans secured by Federal Housing Administration insured mortgages over which said federal agency has supervisory control under regulatory statutes of the United States.

FRANK J. KELLEY,  
*Attorney General.*

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**EXECUTIVE ORGANIZATION:**

**Department of State Highways—Mackinac Bridge Authority**

The department of state highways may maintain the Mackinac Bridge with its own forces or contract with independent contractors for said maintenance in accordance with procedures established by law.

The department of state highways, in the exercise of its powers to direct and supervise the Mackinac Bridge Authority, has control over budgeting to the extent that it may approve or disapprove an item of “public information” appearing in a budget of the authority.

No. 4653

July 10, 1969.

Mr. Henrik E. Stafseth, Director  
Department of State Highways  
Highway Building  
Lansing, Michigan

In two brief letters you have requested my opinion on the following questions:

1. “‘Jurisdiction’ of the Mackinac Bridge, to a major degree, has been transferred from the Mackinac Bridge Authority to the Michigan Department of State Highways.  
“In view of the above situation, we request your formal opinion on the question whether the Michigan Department of State Highways may maintain the Mackinac Bridge with its own forces or may contract for said maintenance.”
2. “The public information function is one of the items submitted by the Mackinac Bridge Authority in their budget for the approval of the Michigan Department of State Highways. The question is therefore posed, whether the Michigan Department of State Highways may approve the said program, in whole or in part.”

Since my conclusions must rest upon a survey of the legal basis upon which the powers and responsibilities of the Mackinac Bridge Authority rest, it is necessary to review the sources from which they are derived. In this regard I can hardly refrain from commenting that the miraculous engineering achievement of spanning the Straits of Mackinac is almost matched by the intricate legal and financial system devised to furnish paper support for the physical structure.

Basically the powers of the Mackinac Bridge Authority are delineated in two legislative acts, the second of which is supplemental to the first. These acts are Act 21, P.A. 1950 Ex. Sess., as amended by Act 141, P.A. 1953; M.S.A. 1958 Rev. Vol. § 9.1360(1) et seq.; M.C.L.A. § 254.301 et seq. and Act 214, P.A. 1952; M.S.A. 1958 Rev. Vol. § 9.1361(1) et seq.; M.C.L.A. § 254.311 et seq.

Section 2 of Act 21, P.A. 1950 Ex. Sess., supra, in pertinent part states:

"There is hereby created a nonsalaried entity as a public benefit corporation and an agency and instrumentality of the state of Michigan to be known as the Mackinac bridge authority, which is hereby made a body corporate, and which may by that name sue and be sued, plead and be impleaded, contract and be contracted with, have a corporate seal and enjoy and carry out all powers herein granted it in furtherance of the duty of the state of Michigan to provide and maintain a system of highways and bridges for the use and convenience of its inhabitants. In addition to the powers expressly granted herein, the authority shall have all powers necessary or convenient to carry out the things herein authorized and to effect the purposes of this act.

" \* \* \*

"The corporate existence of the authority shall continue until all of its duties under this act have been completed and such powers and duties as may hereafter be granted and imposed upon it by subsequent legislative act have been performed."

Sections 5, 6 and 7 of Act 214, P.A. 1952, supra, in pertinent part, states:

"Sec. 5. The authority is hereby authorized by resolution or resolutions of the board to provide for the issuance of revenue bonds for the purpose of paying the cost of the bridge or for the purpose of refunding the bonds, including refunding bonds, or for any combination of such purposes. \* \* \*"

"Sec. 6. \* \* \* Either the resolution providing for the issuance of bonds or such trust indenture may contain such provisions for the security and payment of such bonds and for the protection and enforcement of the rights and remedies of the bondholders as may be deemed advisable by the board, not in violation of the constitution of this state, including specifically covenants setting forth: (a) The duties of the authority in relationship to the construction, maintenance, operation, repair and insurance of the bridge; (b) the pledge of the revenues of the bridge or any part thereof; (c) limitations on the amount of money derived from the operation of the bridge which may be expended for operating, administrative or other specified

expenses of the authority; (d) the safeguarding and application of the fund from which the cost of the bridge is to be paid and of the revenues pledged to the payment of the bonds, all of which may be deposited in as received and paid out by such bank or banks as may be therein provided, and none of which need be paid into the state treasury; (e) provision for the employment of consulting engineers to supervise the construction of the bridge and to supervise its maintenance and operation, to which consulting engineers may be delegated all rights and duties with respect thereto deemed advisable by the board and the appointment of which consulting engineers shall be subject to such approval by the purchasers or holders of the bonds as may be provided in such resolution or indenture; (f) rights and remedies of the bondholders and the trustee, if any, and such restrictions thereon as may be considered advisable; and (g) any other and additional provisions ordinarily found in trust agreements securing bond issues protecting and enforcing the rights and security of the holders of the bonds and designed to make the bonds more attractive and negotiable at the best available prices. \* \* \*."

"Sec. 7. The authority shall properly construct, maintain, operate, repair, manage and control the bridge, except as hereinafter provided, and shall determine the rates of tolls and charges to be made for the services and facilities afforded thereby and may make and enter into all contracts or agreements deemed necessary or desirable to the performance of its duties and the execution of its powers under this act \* \* \* .

"In the event that the bonds herein authorized are sold prior to December 31, 1953, there shall be appropriated from the funds of the state highway department derived from taxes imposed upon gasoline or other motor fuels and on motor vehicles registered in the state to the Mackinac bridge authority amounts sufficient to pay all expenses of operating, repairing and maintaining the bridge in each fiscal year beginning with the fiscal year in which the bridge shall be opened for traffic, and until the cost of bridge, including all principal of and interest on the bonds issued hereunder and all advances made therefor shall have been fully paid: Provided, however, That the amount so appropriated to the authority shall not exceed in the aggregate \$417,000.00 in any one fiscal year. The amounts so paid shall be based upon requisitions of the authority subject to the audits hereinbefore described in this act. Inasmuch as the bridge will be an essential part of the public highway system of the state and the operation, repair and maintenance of the bridge will be the performance of an essential governmental function of the state, the provisions of this paragraph shall have the force of contract with the holders of the bonds issued for the bridge, subject only to prior pledges of said funds heretofore made: \* \* \*

"At such time as the cost of the bridge, including all principal of and interest on the bonds issued hereunder and all advances made therefor, shall have been fully paid from such tolls, fees, rents, rates and charges, said bridge shall thereafter be maintained and operated

by the state highway commissioner, who is hereby authorized to continue to charge such tolls, fees, rates and charges for the use of said bridge as are deemed necessary by him to reimburse the state highway department for all sums theretofore paid by said department pursuant to the provisions of this act for operation and maintenance of the bridge: Provided, however, That at such time as said reimbursement has been made, said bridge shall thereafter be maintained and operated by the state highway commissioner as a free bridge."

Pursuant to its statutorily invested powers the Mackinac Bridge Authority proceeded to fulfill its functions including arrangement for flotation of revenue bonds amounting to \$99,800,000 consisting of two series; Series A in the amount of \$79,800,000 and Series B in the amount of \$20,000,000.

The Trust Indenture, dated for convenience of reference as July 1, 1953, was executed by the Mackinac Bridge Authority, a body corporate and an agency and instrumentality of the State of Michigan created by the aforesaid acts and by the Detroit Trust Company, as trustee for the bondholders.

Pertinent portions of the indenture provide as follows:

"Sec. 505. \* \* \*

"The Authority further covenants that on or before the first day of each fiscal year it will finally adopt the budget of Current Expenses for such fiscal year (hereinafter sometimes called the 'Annual Budget') and that the total appropriations in any division thereof will not exceed the total appropriations in the corresponding division in the preliminary budget. Copies of the Annual Budget shall be filed with the Trustee, the State Highway Department and the Auditor General of the State of Michigan and mailed by the Authority to the Consulting Engineers and the principal underwriter.

"If for any reason the Authority shall not have adopted the Annual Budget before the first day of any fiscal year, the preliminary budget for such fiscal year, if approved by the Consulting Engineers, or, if there is none so approved, the budget for the preceding fiscal year, shall, until the adoption of the Annual Budget, be deemed to be in force and shall be treated as the Annual Budget under the provisions of this Article.

"The Authority may at any time adopt an amended or supplemental Annual Budget for the remainder of the then current fiscal year, but no such amended or supplemental Annual Budget shall be effective until it shall be approved by the Consulting Engineers, and when so approved the Annual Budget as so amended or supplemented shall be treated as the Annual Budget under the provisions of this Article. Copies of any such amended or supplemental Annual Budget shall be filed with the Trustee, the State Highway Department and the Auditor General of the State of Michigan and mailed by the Authority to the Consulting Engineers and the principal underwriter.

"The Authority covenants that the Current Expenses incurred in any fiscal year will not exceed the reasonable and necessary amount thereof, and that it will not expend any amount or incur any obliga-

tions for operation, repair and maintenance in excess of the amounts provided for Current Expenses in the Annual Budget, except as provided in Section 506 of this Article and except amounts payable from the Reserve Maintenance Fund."

"Section 1301. In the event of the dissolution of the Authority all of the covenants, stipulations, obligations and agreements contained in this Indenture by or in behalf of or for the benefit of the Authority shall bind or inure to the benefit of the successor or successors of the Authority from time to time and any officer, board, commission, authority, agency or instrumentality to whom or to which any power or duty affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law, and the word 'Authority' as used in this Indenture shall include such successor or successors."

In *Nichols v. State Administrative Board* (1954), 338 Mich. 617, the validity of the issuance and sale of the Mackinac Bridge Authority bonds was attacked as constituting an indebtedness of the state prohibited by the debt limitations of Article X, Section 10 of the Michigan Constitution of 1908. The Michigan Supreme Court, however, upheld the validity of the issue on the ground that revenue bonds which are paid solely from the revenues of the Bridge Authority do not constitute an indebtedness of the state within the meaning of the constitutional provision. *Attorney General, ex rel. Eaves, v. State Bridge Commission* (1936), 277 Mich. 373. When the point was made that, if sold prior to December 31, 1953, the bonds require appropriation from motor vehicle funds of the state highway department of a sum each year sufficient to pay for the operation, repair and maintenance of the bridge up to a maximum of \$417,000, the court noted:

"\* \* \* It is admitted that the bridge will be part of the highway system of the State of Michigan, the same as the ferries now operating across the Straits of Mackinac have been considered. The annual loss from the operation of the ferries across the Straits of Mackinac has averaged over \$500,000 a year during the past 5 years, according to the printed reports on file in the office of the auditor general. Act No. 141, *supra*, further provides that when the bonds have been paid off, the tolls for the use of the bridge shall continue until the highway department has been repaid all sums that it has expended for the maintenance, operation and repairs of the bridge.

"\* \* \*

"In *State Highway Commissioner v. Detroit City Controller*, 331 Mich 337, we held valid an irrevocable pledge of earmarked funds of the State highway department to be used to pay the principal and interest on bonds. That case applied the 'special fund' doctrine and held that the pledge of such special funds did not constitute indebtedness within the meaning of article 10, §§10 and 11 of the 1908 Michigan Constitution. \* \* \*"

(*Nichols v. State Administrative Board* (1954), 338 Mich. 617, 621)

Shortly thereafter the Attorney General relied upon the authority of

the *Nichols* case, supra, to hold that employees of the Authority were not in the state service as contemplated by the civil service amendment to the 1908 Constitution (Article VI, Section 22) since it was "an entity existing separately from the state, and having specific *statutory* authority to select and compensate its employees without the legal obligation to comply with the requirements of the Civil Service Commission." (emphasis added) OAG 1955-56, Vol. II, p. 461, 464.

But the enactment of the Executive Organization Act of 1965, Act 380 P.A. 1965, as amended, M.S.A. 1968 Cum. Supp. § 3.29(1) et seq.; M.C.L.A. § 16.101 et seq, placed the Mackinac Bridge Authority under the direction and supervision of the Department of State Highways and deprived it of its statutorily derived plenary status. The consequences of passage of the Executive Organization Act were reviewed and discussed by me in Opinion No. 4468, OAG 1965-66, p. 291, and, with respect to employment of personnel, I noted that:

"The housekeeping functions of the bridge authorities having been placed under the direction and supervision of the head of the principal department, the Michigan Department of State Highways, it is clear that the legislature has, by implication, repealed that part of the act having to do with Mackinac and International Bridge Authorities which provide that said bridge authorities may hire employees and fix their compensation."

(page 294)

To the question of whether the Highway Department has full control, direction and power of approval over budgeting, expenditures, procurement, accounting, personnel, equipment and supplied inventory, and similar management functions of the Mackinac Bridge Authority, I responded:

"\* \* \* the department of highways may exercise such control in the areas delineated \* \* \* as is necessary to accomplish effective management in said areas. The control exercised must also be in keeping with the provisions of the trust indentures."

(p. 296)

And I then stated that, while the *operation* of the bridge falls within the independent authority of the Mackinac Bridge Authority, its *maintenance* is subject to the direction and supervision of the department.

This brings us to the two questions posed in your two separate letters of even date.

As to the question of whether the department may maintain the bridge with its own forces or may contract for said maintenance, we may look for our answer to the act that provided for the organization, powers and duties of the state highway commission and state highway department, Act 286, P.A. 1964, M.S.A. 1968 Cum. Supp. § 9.216(1) et seq.; M.C.L.A. § 247.801 et seq. Section 7 of this act empowers the commission to "employ personnel necessary and proper to carry out its duties," subject to laws governing state employment, and to "let all contracts for the construction, improvement and maintenance of the highways under its jurisdiction, as provided by law." Thus the option of selecting which of the two means of fulfilling its duties rests with the commission.

Your second question is reminiscent of one addressed in my former Opinion No. 4468, supra. At that time I was asked:

“Does the Executive Organization Act of 1965 give the Highway Department full control, direction and power of approval over budgeting, expenditures, procurement, accounting, personnel, equipment and supplies inventory, and similar management functions of the Mackinac Bridge Authority? \* \* \*.”  
(p. 295)

To which I replied:

“\* \* \* the department of highways may exercise such control in the areas delineated in your second question [meaningful control, direction and power of approval over budgeting, expenditures, procurement, accounting, personnel, equipment and supplied inventory and similar management functions] as is necessary to accomplish effective management in said areas. The control exercised must also be in keeping with the provisions of the trust indentures.”  
(p. 296)

Applied to the more specific question at hand, this conclusion authorizes the department of state highways to approve the budgetary program of the Authority and to determine whether the item for public information is acceptable. This is so because the item “public information” is an item of budgeting and procurement that is necessary to accomplish effective management.

Such an interpretation does not violate any of the obligations assumed under the trust indenture but is a fulfillment of these obligations by the joint agency of the state highway department and the Mackinac bridge authority instead of the single agency of the Mackinac bridge authority. This is permissible since the provisions of the trust indenture (specifically Section 1301, supra) contemplates the complete dissolution of the Authority with the assumption of the covenants, stipulations, obligations and agreements by another successor agency; thus the assumption by the state highway department of certain powers formerly exercised by the Authority would not constitute a violation of the existing agreements and trusts indentures given as security for the bond issues.

FRANK J. KELLEY,  
*Attorney General.*

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