

Therefore, it is my opinion that members of the State Board of Education have the right to use stationery provided by the state to communicate with other elected and appointed officials as well as citizens generally on matters of governmental concern. Materials and supplies of the department may be utilized to communicate the views of members of the State Board of Education to the public.

FRANK J. KELLEY,  
*Attorney General.*

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**RETIREMENT SYSTEMS:** Use of retirement reserves to fund accrued liabilities.

**CONSTITUTIONAL LAW:** Use of retirement funds.

Retirement funds of public retirement systems accumulated since January 1, 1964 may not be used to finance unfunded accrued liabilities.

Public funding of financial benefits due public employees or officers for services rendered after January 1, 1964 is a part of the contract for such financial benefits and the contract cannot be impaired.

No. 4656

October 17, 1969.

Hon. James H. Heinze  
State Representative  
The Capitol  
Lansing, Michigan

You have requested my opinion upon the following questions:

1. Is it possible under the Constitution and law of the State of Michigan for funds to be borrowed or otherwise obtained from the reserves accumulated for current liability subsequent to January 1, 1964 for the purpose of paying any part of the pensions earned by teachers or other state employees for services rendered prior to January 1, 1964?
2. If so, what would be the proper legal procedure to obtain such funds for this purpose?
3. If not, what constitutional amendment or amendments and what legal procedure would be required to enable the State to obtain funds from post-constitutional reserves to pay pensions earned prior to the new constitution?

In Article IX, Sec. 24 of the Michigan Constitution of 1963, the people have provided:

"The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby.

"Financial benefits arising on account of service rendered in each fiscal year shall be funded during that year *and such funding shall not be used for financing unfunded accrued liabilities.*" (Emphasis supplied)

The term "financing" is defined (*Webster's Third New International Dictionary*) as the act, process or instance of raising or providing funds. Applying this definition as generally and commonly understood by the people in adopting the Michigan Constitution of 1963, *Michigan Farm Bureau v. Secretary of State* (1967), 379 Mich. 387, it must be concluded that the people have placed a limitation upon the authority of the legislature to provide by law for the use of reserves accumulated for current liability of public pension systems as a source of funds for the payment of unfunded accrued liabilities.

A study of the debates of the Constitutional Convention of 1961 clearly demonstrates that this also was the intention of the framers of the 1963 Constitution.

The Constitutional Convention first considered Article IX, Sec. 24, above quoted, as Committee Proposal No. 4. It read as follows:

"Sec. a. THE ACCRUED FINANCIAL BENEFITS OF EACH PENSION PLAN AND RETIREMENT SYSTEM OF THE STATE AND ITS POLITICAL SUBDIVISIONS SHALL BE A CONTRACTUAL OBLIGATION THEREOF, WHICH SHALL NOT BE DIMINISHED OR IMPAIRED THEREBY.

"ALL SUCH BENEFITS ARISING ON ACCOUNT OF SERVICE RENDERED IN EACH FISCAL YEAR SHALL BE FUNDED DURING THAT YEAR AND SUCH FUNDING SHALL NOT BE USABLE FOR FINANCING UNFUNDED ACCRUED LIABILITIES."

*Official Record, Constitutional Convention 1961, p. 770.*

The second paragraph of Committee Proposal No. 40 is particularly pertinent to your question.

Mr. Brake, Chairman of the Committee on Finance and Taxation which recommended that the committee proposal be included in the Constitution, submitted the following pertinent reasons in support of the proposal:

"The problem here is extremely difficult. Any public system that is set up should have put into it each year sufficient money to meet all of the liability accrued during that year. If that is done from the very beginning, the system is not an excessive burden; but when you go for years without putting in enough money to cover the liability accruing each year, then to try to catch up for the past deficiency becomes a problem of magnitude. On the state level the 2 retirement systems for public school employees are pitiful examples of what results when the state simply puts in for a long period just enough money to meet the payments for retirees due each year."

*Official Record, Constitutional Convention 1961, Vol. I, page 770.*

Delegate Van Dusen spoke in favor of the committee proposal and made the following observations pertinent to your question:

"Now, the second provision of this proposal deals with the financial aspects of the maintenance of pension plans. There are 2 kinds of problems in the funding of any pension plan. One is past service benefits which have not been adequately funded. And in the case of

many of our public employee retirement systems, years have gone by when insufficient money has been put into the fund to take care of the future benefits which would in due course accrue to persons retiring from public employment. . . .

"In other words, in each year, when a certain number of employees are employed who can be expected at some future point to retire and draw upon the fund for the benefits which would be contractually theirs, in each year it will be incumbent, under this provision, upon the employing unit to put into the fund enough money to provide those benefits when they accrue."

*Ibid*, page 771.

Delegate Downs, in requesting clarification of the committee proposal, stated:

". . . When the term 'accrued financial benefits' is used, as I understand from Mr. Stafseth, the purpose is to see that instead of using a pay as you go system, there would be a funded system from now on, with some plan to pick up what had not been properly funded. Now, I assume from that that if a governmental unit sets aside so much money for the funding of a pension plan, that that money could not then be used for any other purpose; . . .

"MR. BRAKE: Answering the first part of your question, I think your understanding is entirely correct. . . ."

*Ibid*, page 773.

Delegate Gover inquired with respect to Committee Proposal No. 40:

". . . Could this conceivably hurt cities, and so forth, who have been borrowing from such funds?"

*Ibid*, page 774.

Delegate Van Dusen responded to this inquiry by making the following observations:

"Mr. Chairman and Mr. Gover, it is designed to prevent cities from in the future using the funds which are put into a pension fund to take care of current service benefits for any other purpose. . . .

"I think that I can give a clearer answer to Mr. Gover's question than I did. This is designed to see that money that is put into a pension fund to service currently accruing benefits is used for no other purpose. . . ."

Delegate Hanna asked the following question:

"Mr. Van Dusen, this would not prevent the pension fund, however—the moneys actually in the pension fund—from investing in the city's own special assessment, revenue or general obligation bonds; am I correct?"

Delegate Van Dusen responded:

"Mr. Chairman and Mr. Hanna, I think you are quite correct, yes."

*Ibid*, page 775.

The Committee of the Whole approved Committee Proposal No. 40, subject to only a minor amendment to strike out the word "such" from the first line in the second paragraph. *Ibid*, page 775. The amendment was subsequently approved on first reading by the Convention. *Ibid*, page 778.

The Convention approved the second paragraph of Committee Proposal No. 40 as reported by the committee on style and drafting without change on second reading. *Official Record, Constitutional Convention 1961*, Vol. II, page 2659.

On third reading Committee Proposal No. 40 was considered by the delegates to the convention as Article IX, Sec. 24. The committee on style and drafting had made only a minor change in the second paragraph, substituting the word "used" for the word "usable" in the penultimate line.

Delegate Seyferth moved to amend Article IX, Sec. 24 by striking out all of the second paragraph. The amendment was not adopted. *Ibid*, page 3184.

Thereafter Article IX, Sec. 24 was approved on third reading by vote of 90 to 36. *Ibid*, page 3186.

In the Address to the People, the delegates to the Constitutional Convention advised as follows:

"This is a new section which requires that accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions be a contractual obligation which cannot be diminished or impaired by the action of its officials or governing body. It provides further protection for those covered by such pension and retirement plans by requiring that benefits arising on account of service rendered in each year be funded during that year. *Such funding shall not be used for financing unfunded accrued liabilities.*" (Emphasis supplied)

*Ibid*, page 3402.

Such careful examination of the debates of the Constitutional Convention indicates a clear and unmistakable intent on the part of the framers of fundamental law that the reserves of public pension systems accumulated for current liability cannot be used as a source of funds to meet unfunded obligations of such pension system.

It must be observed that retirement funds of the various public retirement systems are invested by the trustees of such retirement funds as provided by law. Article IX, Sec. 19 permits the investment of such funds in common stock of companies when authorized by the legislature. Generally, the legislature has empowered the trustees of various public retirement funds to invest such funds in the bonds of the state of Michigan. See, by way of example, Section 8 of Chapter I of Act 136, PA 1945, as amended, being M.C.L.A. § 38.208; M.S.A. 1968 Rev. Vol. § 15.893(8), authorizing such investments for Michigan Public School Retirement System. The limitations upon state borrowing of moneys are set forth in Article IX, Sections 14 and 15. Where lawfully authorized, it is concluded that investment of public retirement funds may be made in bonds of the state.

Therefore, in response to your first question, it is my opinion that the reserves which have been accumulated to fund financial benefits of public employees retirement systems subsequent to January 1, 1964 shall not be

used for the purpose of financing unfunded liability accruing prior to that date.

My response to your first question makes answer to your second question unnecessary.

In response to your third question, it is necessary to read all of the provisions of Article IX, Sec. 24 as a whole and to give meaning to all its parts. *Vetter v. Fowler* (1911), 167 Mich. 499. Under its provisions the people have provided that financial benefits of public pension or retirement systems are contractual in nature, which shall not be diminished or impaired. The funding of financial benefits for current service after January 1, 1964 is part of that contract and the people have expressly prohibited the use of such funds to pay for unfunded accrued liabilities. This is a fundamental part of the contract which cannot be impaired.

Article I, Section 10 of the United States Constitution forbids the state from enacting any law impairing the obligation of contract. Therefore, it must follow that the Michigan Constitution cannot be amended so as to impair the contract for accrued financial benefits of any public retirement system for service rendered after January 1, 1964.

FRANK J. KELLEY,  
*Attorney General.*

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#### TRAILERS: RESIDENTIAL ZONING.

A township, city or village may regulate mobile homes, though they conform to residential zoning requirements, by specific reference to mobile homes in appropriate ordinance. They may not, however, completely prohibit mobile homes.

No. 4680

October 31, 1969.

Honorable Harry A. DeMaso  
State Senator  
The Capitol  
Lansing, Michigan

You ask my opinion on two questions concerning municipal zoning power with respect to mobile homes.

The first question is as follows:

“Does a township, city or village have statutory authority to bar the use and occupancy of a mobile home as a residence if it meets the requirements of a zoning ordinance for a residence?”

Act 243, P.A. 1959, as amended, being M.C.L.A. § 125.1001 et seq.; M.S.A. 1961 Rev. Vol. & Supps. § 5.278(31) et seq., the trailer park act of 1959, provides at Section 16 that a permit to operate a trailer coach park does not relieve an operator from the responsibility of complying with all applicable codes, regulations or ordinances not in conflict with said act.

A “mobile home” is defined by Section 30a of the Michigan vehicle code as “a vehicle which can be drawn on a highway and is used exclusively