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COLLEGES & UNIVERSITIES: Admittance of students to
Accreditation of schools by.

CONSTITUTIONAL LAW: Powers and duties of State Board of Educa-
tion.
EDUCATION, STATE BOARD OF: Powers and duties.

PRIVATE ACCREDITATION ORGANIZATION: Authority to accredit
schools.

While the State Board of Education has the constitutional authority to establish a program for accrediting the Michigan public schools, it is not under a constitutional duty to do so.

The State board of Education has no authority to establish standards of admittance to Michigan institutions of higher education which grant baccalaureate degrees.

The University of Michigan and the North Central Association of Colleges and Secondary Schools may engage in the accreditation of the Michigan public schools without the explicit designation to do so by the State Board of Education. The latter is a private agency.

No. 4707

May 5, 1971.

Dr. John W. Porter
Superintendent of Public Instruction
Michigan Department of Education
Lansing, Michigan

You have asked for my opinion on the following questions:

"1. Assuming the State Board of Education has the authority, under constitutional provisions, to accredit Michigan schools, does it also have the responsibility to do so?

"2. May another agency within the state engage in the accreditation of Michigan schools without the explicit designation to do so by the State Board of Education?"

Responding to my request that you indicate with some precision your use of the term "accredit," you stated that the State Board of Education's request is in the following context:

"to recognize (an educational institution) as maintaining standards that qualify the graduates for admission to higher or more specialized institutions . . .

"to vouch for, as in conformity with a standard."

Response to your questions is provided in such context.

Prior to the adoption of the Michigan Constitution of 1963, neither the Michigan Constitution of 1908 nor any state statute had empowered or imposed a duty on the state superintendent of public instruction or the state board of education to accredit the Michigan schools. Since the adoption of the Michigan Constitution of 1963, the state legislature has not seen fit to impose a duty on the state board of education to accredit the Michigan schools.

The Const. 1963, art. 8, § 3, provide sin pertinent part as follows:

"Leadership and general supervision over all public education, including adult education and instructional programs in state institutions, except as to institutions of higher education granting baccalaureate degrees, is vested in a state board of education. . . ."

At the outset, it should be noted that the above constitutional provision grants the State Board of Education constitutional power to exercise leadership and general supervision over all *public* education in Michigan, *Welling v. Livonia Board of Education*, 382 Mich. 620, 624 (1969), ". . . except as to institutions of higher education granting baccalaureate degrees. . . ." Const. 1963, art. 8, § 3.

Pursuant to the Const. 1963, art. 8, § 3, the Michigan Supreme Court in *Welling*, *supra*, specifically and unanimously held the following:

"It is the responsibility of the state board of education to supervise the system of free public schools set up by the legislature and, as a part of that responsibility, to promulgate regulations specifying the number of hours necessary to constitute a school day for elementary school students as well as for other classifications or groupings of students, to determine the curricula *and, in general, to exercise leadership and supervision over the public school system.*" (Emphasis supplied) p. 624.

It can therefore be concluded that the people of the State of Michigan, pursuant to the Const. 1963, art. 8, § 3, entrusted the "leadership and general supervision" of public education to the State Board of Education. Thereafter, the Michigan Supreme Court in *Welling*, *supra*, gave a very broad and liberal interpretation of the State Board of Education's power to exercise leadership and general supervision over the Michigan public schools. Consequently, it is my opinion that included within the State Board of Education's constitutional power to exercise leadership and general supervision over the Michigan public schools is the *authority* for the State Board of Education to establish and set up standards for Michigan public high schools and to vouch for them as being in conformity with such standards.

However, to hold that the State Board of Education has the *authority* to accredit the Michigan public schools does not mean it has the *responsibility* or duty to do so. When the Michigan Supreme Court used the word "responsibility" in its opinion in *Welling*, *supra*, it is clear that the court was referring to the constitutionally imposed duties of the State Board of Education. *Welling*, *supra*, p. 626 (concurring opinion). Therefore, it is assumed that by your use of the word "responsibility" in your first question, you are referring to a duty imposed by law.

It is true that the Michigan Supreme Court held in *Welling*, *supra*, that the State Board of Education has the constitutional responsibility to determine the length of a school day and "to determine the curricula of the school and, in general, to exercise leadership and supervision over the public school system," but nowhere did the Michigan Supreme Court mention accreditation. Further, it should be noted that the Official Record of the Constitutional Convention of 1961 did not anywhere consider accreditation of the Michigan public schools and if the framers of the Michigan Constitution of 1963 intended for the State Board of Education to be constitutionally compelled to accredit the Michigan public schools, they could have expressly

imposed such a duty. Consequently, the conclusion is compelled that a study of the Const. 1963, art. 8, § 3 does not reveal that the State Board of Education is clearly compelled by the Constitution to establish a program of accreditation. Therefore, since the Michigan law is well settled that only clear legal duties may be mandated, *Detroit Board of Education v. Superintendent of Public Instruction*, 304 Mich. 206, 217 (1943); *Welling*, supra, p. 624, it is my opinion that the State Board of Education does not have the responsibility, i.e., constitutionally compelled legal duty, to accredit the Michigan public schools.

Moreover, since the State Board of Education does not have any funding powers, its authority to establish a program to accredit the Michigan public schools will obviously be limited to the funds made available by the legislature for such a program. Thus, the implementation of any program of accreditation by the State Board of Education will depend, in part, on the financial support of the state legislature.

Such a program of accreditation, if implemented by the State Board of Education, could only serve those purposes which are legally within the realm of the State Board of Education's constitutional and statutory powers. In other words, the State Board of Education would not have the power to determine admittance standards for the various Michigan institutions of higher education which grant baccalaureate degrees. On the contrary, pursuant to their respective constitutional powers of general supervision (Const. 1963, art. 8, § 5 and § 6), the governing boards of such institutions of higher education have undeniable constitutional power to determine their own standards for admitting students to their respective institutions as against any claim that the State Board of Education may, through the accreditation process, determine the standards for admission to such institutions. In fact, no other conclusion would be tenable in light of the express language of the Constitution, wherein it is provided that leadership and general supervision over all public education is vested in the State Board of Education *except* institutions of higher education granting baccalaureate degrees. Const. 1963, art. 8, § 3.

Further, it is clear that the general planning and coordinating role of the State Board of Education over all public education, including higher education, set forth in the second sentence of Const. 1963, art. 8, § 3, does not extend to determining admission standards for individual institutions of higher education having the authority to grant baccalaureate degrees.

In considering your second question, it is apparent that you are referring to the University of Michigan and North Central Association of Colleges and Secondary Schools and their respective programs for accrediting the secondary schools in Michigan. A careful review of the Michigan Constitution of 1963 and the pertinent statutory laws of Michigan fails to reveal any provision which restricts, in any manner, the authority of the University of Michigan or the authority of the North Central Association of Colleges and Secondary Schools from continuing their respective programs for accrediting the secondary schools of Michigan. However, it should be observed that the actions of the North Central Association of Colleges and Secondary Schools are actions of a private agency which do not constitute governmental action.

Therefore, it is my opinion that another agency within the state may engage in the accreditation of the Michigan public schools without the explicit designation to do so by the State Board of Education.

FRANK J. KELLEY,
Attorney General.

710506.1

TAXATION: COUNTY EQUALIZATION: No. 152, P.A. 1970, which amends § 34(1) of the general property tax act, as amended, to provide for separate equalization of real property and personal property and to provide for the use of separate equalization factors of same on tax rolls and statements, is constitutional. It is not in conflict with any other section of the general property tax act.

No. 4719

May 6, 1971.

Mr. William L. Cahalan
Prosecuting Attorney
601 City-County Building
Detroit, Michigan 48226

You have asked the following questions:

1. Is No. 152, P.A. 1970, constitutional?
2. If the act is constitutional, does it, nevertheless, conflict with other sections of the general property tax act?¹

Number 152, P.A. 1970, amends § 34 of the general property tax act,² which deals with county equalization and appellate review of county equalization by the State Tax Commission. In pertinent part, the amendatory language reads:

“* * * Notwithstanding any other provisions of this act, effective December 31, 1970, the boards of commissioners and the state tax commission shall equalize real and personal property separately by adding to or deducting from the valuation of taxable real property, and by adding to or deducting from the valuation of taxable personal property in any township, city or county, such amounts as will produce a sum which represents the proportion of true cash value established by the legislature. The tax roll and the tax statement shall clearly set forth the latest state equalized valuation for each item or property which shall be determined by using a separate factor for personal property and a separate factor for real property as equalized. * * *”

Before approaching the inquiry as to the constitutionality of this legislation, we shall note that county equalization historically has involved the addition or subtraction of one aggregate sum from the aggregate assessed valuation of assessing districts. Ever since the revision of statutes in 1838,³

¹ No. 206, P.A. 1893, as amended (M.C.L.A. § 211.1, et seq.; M.S.A. and 1970 Cum. Supp., § 7.1, et seq.)

² Sec. 34 of No. 206, P.A. 1893, as amended (M.C.L.A. § 211.34; M.S.A. 1971 Curr. Mat., § 7.52)

³ Revised Statutes of 1838, Title V, Chapter 2, § 14.