

It is therefore clear that the legislative enactment of a retirement program for state classified employees provided for in 1943 P.A. 240, supra, created a vested right in these employees to certain pension benefits. There is, however, no inherent conflict between having a legislative retirement program for state employees and a civil service retirement program that provides for supplementary retirement benefits. The retirement act and its machinery of implementation, therefore, continues in effect and can only be amended or repealed by legislative act providing accrued financial benefits are not diminished or impaired thereby. Should the legislature decide that it is desirable to transfer the entire state classified employees retirement program to the civil service commission it must do so by enactment of a statute accomplishing this purpose.

FRANK J. KELLEY,
Attorney General.

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SOCIAL SERVICES: Welfare Recipients.

COUNTIES: Board of Commissioners.

Access of board of county commissioners to list of welfare recipients.

No. 4733

January 6, 1972.

R. Bernard Houston, Director
Department of Social Services
Commerce Center Building
Lansing, Michigan

You ask whether a county department of social services can properly and legally furnish a county board of commissioners with lists of all clients receiving any form of public assistance through a particular county office. You attach a letter to a county director from the chairman of a county board of commissioners. He asks for a list of constituents who are receiving "welfare assistance of any type," stating as the purpose of the board of commissioners to check the list and to notify the Department of Social Services of any case that they wish to have investigated. The letter states that the commissioners realize that the list is strictly confidential and will be used only to determine if constituents are receiving assistance when the board of county commissioners feels they should not be. Assistance of any type would include general assistance by the county pursuant to M.C.L.A. 400.55; M.S.A. 16.455, as well as categorical assistance with state-federal funds to persons eligible for old age assistance, aid to dependent children, aid to the blind, aid to the disabled and medical assistance. Section 35 of the Michigan social welfare act provides that:

"All records relating to categorical assistance, including medical assistance, shall be confidential and shall not be open to inspection except that the state bureau shall have the power to promulgate and enforce regulations for the use of such records as may be necessary

from time to time for purposes related to federal, state or local public assistance of any kind." M.C.L.A. 400.35; M.S.A. 16.435.

Section 64(1) of the Michigan social welfare act provides in pertinent part as follows:

"Notwithstanding the provisions of section 35, all applications and records concerning any applicant for or recipient of any form of aid or relief under the terms of this act, except medical assistance, shall be considered public records and shall be open to inspection by persons duly authorized by the federal or state department, the state department or the duly elected officials of the county . . . involved, in connection with their official acts . . ." M.C.L.A. 400.64; M.S.A. 16.464.

Section 64(2) further limits the availability of such records by providing that all records relating to persons applying for, receiving or formerly receiving medical service under the categorical assistance programs of this act shall be confidential and shall be used only for the purposes directly and specifically related to the administration of the medical program. Section 18 of the Michigan social welfare act, being M.C.L.A. 400.18; M.S.A. 16.418, provides for distribution by the state department of moneys appropriated by the legislature for public welfare grants and respective general relief. Under subparagraph (b) of the cited section up to 40% of the net amount expended monthly for general relief by county departments may be reimbursed to the county. Further provision is made for reimbursement up to 100% of the county general relief costs where they are in excess of 1 mill of the state equalized valuation. Therefore, official acts performed with respect to general assistance may relate to categorical assistance programs through the reimbursement provisions.

We have previously been supplied with a copy of an opinion of the prosecuting attorney indicating that the request of the board of commissioners was rejected by the county department of social services on the basis that the board of commissioners can only obtain the information in connection with their "official acts" as set forth in section 64 and that the commissioners do not determine eligibility for public assistance, this function being lodged in the department of social services.

The board of county commissioners performs the official act of appropriating county funds from which general assistance is paid in the first instance. The board is therefore entitled to review the list in connection with this official act.

It is further relevant to note, however, that the statutory provisions quoted which relate to maintenance of confidentiality make it inappropriate that the list be spread upon the record of the board of county commissioners so as to become part of the public record of the meeting. Attention is called to the provisions of M.C.L.A. 400.64(1); M.S.A. 16.464 making it unlawful for any person to utter or publish the names or addresses of recipients of welfare and the amounts of such aid or relief granted except in cases where fraud is charged or wrongful grant of aid is alleged. It is therefore suggested that the list be made available to a representative of the commission for their use in pursuance of the official act of the county commissioners in appropriating funds for general assistance purposes. In the letter enclosed

the chairman of the board has expressed a willingness to maintain the confidentiality of the list.

You are therefore advised that the board of county commissioners is entitled to access to the list of recipients of welfare and public assistance upon request to the county department of social services with the procedural safeguards above set forth.

FRANK J. KELLEY,
Attorney General.

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CONSTITUTIONAL LAW: Powers of State Board of Education over higher education.

EDUCATION, STATE BOARD OF: Powers to plan, coordinate and advise as to financial needs of higher education.

GOVERNOR: Appointment of temporary commission.

The legislature and the governor are without authority to establish a commission on higher education, even on a temporary basis, to plan, coordinate and to advise as to the financial requirements of public higher education, including all matters incidental thereto.

No. 4735

January 19, 1972.

Dr. John W. Porter, Chairman
State Board of Education
Lansing, Michigan

The State Board of Education has requested my opinion on the following question:

“(W)hether the Governor, by appointing the Commission on Higher Education and urging the Legislature to fund the operation, is unlawfully usurping the constitutional authority of the publicly elected State Board of Education.”

This question relates to the “SPECIAL MESSAGE TO THE LEGISLATURE ON EXCELLENCE IN EDUCATION—EQUITY IN TAXATION”, transmitted by the governor to the legislature on April 12, 1971. The special message may be found in the *Journal of the Senate* 1971, No. 42, pp. 586, 588, 591, and in considering the question, it would be helpful to quote the following portions:

“SUMMARY OF PROPOSALS

“In this special message to you, I am proposing, in order to further and to accelerate our orderly progress towards the achievement of our goals:

* * *

“15. Appointment of a Commission on Higher Education to begin immediately to plan for upgrading of educational opportunity in