

In summation, it is my opinion that each of your questions must be answered in the affirmative, and an appeal may be taken to circuit court in the circumstances you have outlined, provided any available administrative remedies have been exhausted.

FRANK J. KELLEY,
Attorney General.

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CONSTITUTIONAL LAW: Limitation on power of the legislature.

SCHOOL DISTRICTS: Power of board of education to levy income tax or other excise taxes.

TAXATION: Income tax and excise taxes.

A board of education of a school district is without authority, constitutional or statutory, to levy an income tax or other excise taxes.

Opinion No. 4763

February 15, 1973.

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

You have requested my opinion on the following questions:

- "1. Does a school district, through its school board, have the authority to levy an income tax or other excise taxes upon the people of a school district under the present constitution?"
- "2. If so, what is the constitutional provision which grants such authority?"

An examination of the provisions of the Michigan Constitution of 1963 indicates that the people have not conferred express authority therein upon a board of education of a school district to levy an income tax or other excise taxes. Failure of the people to so provide is not dispositive of your question since the law is well settled that the Constitution is a limitation upon the otherwise plenary power of the legislature. *Toy, ex rel. Elliott v Voelker*, 273 Mich 205 (1935).

The power of cities to levy income taxes is not dependent upon a constitutional grant. The Michigan Supreme Court has ruled in *Dooley v City of Detroit*, 370 Mich 194 (1963), that the legislative grant of power to cities to lay and collect excises was legally sufficient to support the levy of an income tax. Subsequent to this decision the legislature has expressly permitted the levy of a city income tax pursuant to 1964 PA 284, MCLA 141.501 et seq; MSA 5.3194(1) et seq.

The legislature has not conferred authority upon a board of education of a school district to levy either an income tax or other excise taxes. Any grant of authority to a board of education of a school district to levy an income tax would be subject to the constitutional limitation imposed by the

people in Const 1963, art 9, § 7, that the income tax shall not be graduated as to rate or base.

Therefore, in response to your first question, it is my opinion that a board of education of a school district is presently without statutory authority to levy an income tax or other excise taxes.

The answer to your first question makes an answer to your second question unnecessary.

FRANK J. KELLEY,
Attorney General.

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MORTUARY SCIENCE, State Board of Examiners in: Rule making power.

Administrative rule requiring advertising to disclose name of licensee in charge of each funeral establishment operating under an assumed or fictitious name is valid. Branch establishments are subject to the rule.

Opinion No. 4756

February 26, 1973.

Board of Examiners in Mortuary Science
1116 South Washington Avenue
Lansing, Michigan 48926

You have requested my opinion as to the validity and applicability of a rule promulgated by the state board of examiners in mortuary science dealing with advertising by persons licensed under 1949 PA 268, as amended, being MCLA 338.861 *et seq*; MSA 14.509(1) *et seq*.

The rule under discussion is 1954 AC R338.864, which reads as follows:

"No person who has received a funeral director's license, an embalmer's license, or a mortuary science license, under the provisions of the Michigan law, shall either by himself or in connection with others, advertise in any newspaper, magazine, or on any sign, stationery, billhead, or other printed matter, the name of any person who is not a licensed funeral director, embalmer, or mortuary science licensee.

"Whenever a funeral establishment is conducted under an assumed or fictitious name, or under the name of a deceased licensee, the name of the licensed funeral director, or mortuary science licensee, in charge must appear in all advertising and printed matter related to that establishment as being in charge of such establishment, and the name of the licensed funeral director, or mortuary science licensee, must appear on the establishment."

The legislature granted rule making authority to the board in section 2 of Act 268, *supra*, by the following language:

". . . Said board is authorized to . . . adopt and promulgate such rules and regulations for the transaction of its business and the betterment and promotion of the standards of service and practice to be followed in the profession of mortuary science in the state of Michigan,