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**BANKING: Deposit of state money**

**CONSTITUTIONAL LAW: Deposit of state money in banks**

**COLLEGES AND UNIVERSITIES: Appropriations of state money**

**STATE DEPARTMENT OF EDUCATION: Appropriations of state money**

**WORDS AND PHRASES: "State money"**

**State appropriations to state universities and colleges are "state money" and must be deposited in national or state banks but not in excess of 50 percent of capital and surplus of such bank.**

**State appropriations to community or junior colleges are "state money" and must be deposited in national or state banks but not in excess of 50 percent of capital and surplus of such bank.**

**The following funds deposited in such banks by the state department of education are "state money":**

1. **Private donations.**
2. **State appropriations.**
3. **Interest earnings on investments.**

**The following funds are not state moneys:**

1. **Public and private college or university deposited with the state department of education.**
2. **Advance by the federal government to state department of education.**

Opinion No. 4786 October 15, 1973.

Financial Institutions Bureau
Department of Commerce
Law Building
Lansing, Michigan 48913

Your predecessor has requested my opinion whether the following funds are subject to the limitation of art 9, § 20 of the Michigan Constitution of 1963:

1. Funds disbursed by the State Treasurer to state universities and colleges;
2. Funds disbursed by the State Treasurer to Michigan community colleges as a result of State appropriations;
3. Funds deposited in Michigan banks by the Michigan Higher Education Assistance Authority.[1]

The pertinent section of the constitution which provides for a limitation as to deposits of "state money" reads as follows:

"Sec. 20. No state money shall be deposited in banks other than those organized under the national or state banking laws. No state

[1] 1960 PA 77; MCLA 390.951 *et seq;* MSA 15.2097(1) *et seq.*

money shall be deposited in any bank in excess of 50 percent of the capital and surplus of such bank. Any bank receiving deposits of state money shall show the amount of state money so deposited as a separate item in all published statements."[2]

Let us first examine the constitutional limitation itself. The constitutions of 1835 and 1850 did not have any such limitation. It first appeared in the Const 1908 as art 10, § 15 and in the Address to the People the following comments were made:

"This is a new section designed to render the moneys belonging to the state *absolutely secure*. The provision requiring any bank having deposits of state money to show the amount thereof, as a *separate item*, in all published statements of such bank secures a wholesome publicity. Under this provision all interested officials and the people themselves will know in what amounts the moneys of the state are deposited in the several depositories.' (*Emphasis added*)[3]

During the 1961 Constitutional Convention debates, Committee Proposal 37a, subsequently adopted as Const 1963, art 9, § 20, was submitted with this comment:

"The first paragraph of the proposal dealing with state deposits in banks is section 15, article X of the present constitution unchanged. In the opinion of the committee and of the fiscal officers of the state it is adequate and satisfactory."[4]

It should be emphasized that the purpose of art 9, § 20 is to render moneys belonging to the state absolutely secure. This is in keeping with the public policy of safeguarding the taxpayers' dollar against loss.

The precise meaning of the words "state money" has never been defined. Instead courts have taken specific facts on a case by case basis, and decided whether the facts shall fall within the phrase "state money."

In *State Licensing Board of Contractors* v *State Civil Service Commission*, 110 So2d 847, 851; LaCA1D 1959, affirmed 123 So2d 76(1960) the Licensing Board contended it was not a state agency and therefore not subject to Civil Service Regulations because its operations were financed by license fees collected by the Board and not by state appropriations. The Court rejected this contention and said it was incorrect to assume that "state funds" comprise only money appropriated by the legislature, but can consist of license fees collected by the Board.

The Court stated further:

"***revenues raised through exercise of such governmental powers by an agency created by the legislature and pursuant to legislative authorization constitute state funds no less than revenues deposited in the State Treasury or paid to other departments or instrumentalities of State government,***"

[2] Const 1963, art 9, § 20.

[3] 2 Official Record, Constitutional Convention, 1907-1908, p. 1435.

[4] 1 Official Record, Constitutional Convention 1961, p. 766.

Fees collected for drivers' licenses were held to be "state money" even though collected by sheriffs. *State ex rel Wright* v *Headrick,* 65 Idaho 148, 139 P 2d 761, 765 (1943)

Also, my predecessor has ruled that fees for residence halls housing units and social centers at the then Michigan College of Mining and Technology pursuant to 9 PA 1938 (Ex Sess), as amended, were not "state money" because they were separate from any educational fees and were to be used for specific purposes. However, tuition fees were declared to be "state money."[5]

Applying the above rules as established by court decision and attorney general opinion we now turn our attention to the specific questions you have asked.

1. Each year the Legislature appropriates moneys to maintain state universities and colleges.[6] Appropriations are pursuant to Const 1963, art 8, § 4 which reads as follows:

> "The legislature shall appropriate moneys to maintain the University of Michigan, Michigan State University, Wayne State University, Eastern Michigan University, Michigan College of Science and Technology, Central Michigan University, Northern Michigan University, Western Michigan University, Ferris Institute, Grand Valley State College, by whatever names such institutions may hereafter be known, and other institutions of higher education established by law. The legislature shall be given an annual accounting of all income and expenditures by each of these educational institutions. Formal sessions of governing boards of such institutions shall be open to the public."

Although the governing boards of state universities and colleges have general supervision of their institutions and control and direction of all expenditures from the institutions' funds,[7] they are state officers, and the institutions are state agencies. *Regents of the University of Michigan* v *Michigan Employment Relations Commission,* 389 Mich 96 (1973); *Attorney General, ex rel Cook* v *Burhans,* 304 Mich 108 (1942).

The requirement of Const 1963, art 9, § 20 in no way deprives the governing bodies of the control and direction of university or college funds nor the supervision of the internal operations of the university or college. Being a state agency the university or college is subject to the constitutional restriction of art 9, § 20, and there is no conflict with the autonomy granted in art 8, § 5. This is in accord with the well-settled doctrine of constitutional construction that the constitution must harmonize various constitutional provisions and give meaning to all of them. *Regents of the University of Michigan* v *Michigan Employment Relations Commission,* supra.

Therefore, it is my opinion that funds disbursed by the State Treasurer to state institutions of higher education are subject to the limitation of Const 1963, art 9, § 20.

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[5] OAG, 1951-1952, No. 1,375, p 217 (April 9, 1951).

[6] See for example, 1973 PA 115; 1972 PA 260; 1971 PA 122.

[7] Const 1963, art 8, § 5 and 6.

2. Community and junior colleges are state agencies. The Community College Act,[8] defines a community college as follows:

> "(1) A community college means an educational institution providing, primarily for all persons above the twelfth grade age level and primarily for those within community distance collegiate and non-collegiate level education including area vocational-technical education programs which may result in the granting of diplomas and certificates including those known as associate degrees but not including baccalaureate or higher degrees***"
>
> "(4)***A Community college is eligible to receive such state aid and assistance as may be appropriated by the legislature for the aid and support of junior colleges or community colleges."[9]

Financial support of community and junior colleges is provided by law.[10] State support has been given for many years, with the most recent appropiations as follows:

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|---|---|
| 1973-74 | $65,873,200.00[11] |
| 1972-73 | 57,382,660.00[12] |
| 1971-72 | 47,164,800.00[13] |
| 1970-71 | 46,265,935.00[14] |
| 1969-70 | 40,696,024.00[15] |

Thus, the Attorney General has ruled that community and junior colleges are state tax supported institutions.[16] Also, in Michigan, the primary responsibility of establishing, maintaining, regulating and controlling public schools belongs to the state.[17] School districts are state agencies[18] and a fortiori so are community and junior colleges because the interest of the state is more direct. Moneys from the state to school districts are "state funds"[19] and tuitions paid to state universities and colleges are "state moneys."[20]

Therefore, it is my opinion that funds disbursed by the State Treasurer to Michigan community and junior colleges as result of appropriations are state moneys and subject to the limitation of Const 1963, art 9, § 20.

3. The Michigan Higher Education Assistance Authority was created as a nonprofit agency and instrumentality of the state of Michigan.[21]

[8] 1966 PA 331; MCLA 389.1 *et seq*; MSA 15.615(101) *et seq.*

[9] 1966 PA 331, § 105; MCLA 389.105; MSA 15.615 (1105).

[10] Const 1963, art 8, § 7.

[11] 1973 PA 84.

[12] 1972 PA 247.

[13] 1971 PA 121.

[14] 1970 PA 83.

[15] 1969 PA 155.

[16] OAG, 1965-1966, No. 4,549, p 361 (September 14, 1966).

[17] OAG, 1967-1968, No. 4,555, p 36 (April 12, 1967); *Sturgis* v *County of Allegan,* 343 Mich 209 (1955).

[18] OAG, 1967-1968, No. 4,371, p 201 (March 6, 1968); *Williams* v *School District No. 3, Green Township,* 3 Mich App 468 (1966).

[19] Id.

[20] OAG, 1951-1952, No. 1,375, p 217 (April 9, 1951).

[21] 1960 PA 77, § 1; MCLA 390.951; MSA 15.2097(1).

Whether an authority is an agency of the state or has separate and independent existence depends on the statutory language. In *City of Dearborn* v *Michigan Turnpike Authority* the court said that the legislature clearly expressed its intention that the Turnpike Authority should not be considered as an alter ego of the state.[22] In 2 OAG, 1956, No. 2,465, p 461 (August 13, 1956), the Attorney General compared the provisions of the Turnpike Act[23] and the Mackinac Bridge Act,[24] showing substantially identical language creating separate legal entities. Each has authority to employ engineers, legal and financial services, issue bonds, hire employees and fix tolls.

We clearly distinguish the Michigan Higher Education Assistance Authority which is a state agency, from the Michigan Turnpike Authority and the Mackinac Bridge Authority, which are independent authorities. When first adopted, the Michigan Higher Education Assistance Authority Act[25] granted certain powers to the Authority. However, in 1969 the powers of the Authority were given to the state department of education,[26] thus strengthening the intent of the legislature to make the Authority a state agency and not an independent authority.

Having determined that the Michigan Higher Education Assistance Authority does not have a separate and independent existence, but is in fact a state agency, does not necessarily mean that all moneys received by the Authority are "state money" within Const 1963, art 9, § 20.

Section 7 of the Higher Education Assistance Authority Act[27] provides:

> "The state department of education may:
>
> "(a) Guarantee 100% of the principal of any loan of money, upon such terms and conditions as it shall prescribe, to persons attending or those having been accepted to attend eligible post-secondary educational institutions to assist them in meeting their expenses of post-secondary education incurred in any one academic year.
>
> "(b) Take, hold and administer, real, personal or mixed property and moneys, or any interest therein, and the income therefrom, either absolutely or in trust, for any purpose of this act. It may acquire property for such purpose by purchase or lease and by the acceptance of gifts, grants, bequests, devises or moneys or loans. No obligation incurred under this act shall be a debt of the state.* * *"

As originally enacted, § 7 provided that money for the purpose of guaranteeing loans was to be acquired by gifts, grants, bequests, devises or loans. However, no obligation of the Authority could be a debt of the state and debts could only be payable from moneys received directly from private sources. Subsequently, the act was amended to provide for the Authority to receive apropriations of moneys for the guarantee fund to be used to match deposits made by Michigan public and private colleges

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[22] 344 Mich 37 (1955).

[23] 1953 PA 176; MCLA 252.101 *et seq;* MSA 9.1095(1) *et seq.*

[24] 1950 PA 21 (Ex Sess); MCLA 254.301 *et seq*; MSA 9.1360(1) *et seq.*

[25] 1960 PA 77; MCLA 390.951 *et seq;* MSA 15.2097(1) *et seq.*

[26] 1960 PA 77, § 7 was amended by 1969 PA 302; MCLA 390.957; MSA 15.2097(7).

[27] MCLA 390.957; MSA 15.2097(7).

and universities.[28] 1964 PA 259 appropriated $300,000.00 for the loan guarantee fund.

In 1965 § 7 of the Higher Education Assistance Authority Act was amended by deleting the provision that debts of the Authority could be paid only from moneys received directly from private sources.[29] In 1966 the guarantee authorized by § 7 was increased from 80% to 100% and the Authority was authorized to accept federal funds.[30] Finally in 1969 the powers of the Authority were given to the state department of education.[31]

For our purposes we are concerned with the flow, nature and source of the funds received by the Authority which are to be used to guarantee loans.

The guarantee fund is officially known as the "Fund for Payments To Local Banks" and sometimes referred to as the "Reserve" fund. At the present time, the "Reserve" fund is comprised of:

1. Private donations.
2. Public and private college deposits.
3. State appropriations to match college deposits.
4. Federal funds.
5. State appropriations (no matching by college required).
6. Interest earned on investment of "Reserve" fund.

Because of the nature and limitations placed on several sources of "Reserve" funds I will discuss each separately.

1. Private donations were gifts and the state department of education accepted them without restriction in accordance with the statute.[32]

Therefore, it is my opinion that these funds are "state money" and subject to the limitation of Const 1963, art 9, § 20.

2. Public and private college and university deposits were not gifts, but merely deposits to be used to guarantee loans for students attending the specific college or university making the deposit. Each college or university making a deposit executed an "Agreement To Deposit Funds," which was accepted by the Michigan Higher Education Assistance Authority. Among the provisions of the agreement we find the following language:

> "We also understand that when there is no longer any outstanding obligation of any student for whom we have furnished an Education Certificate, MHEAA will refund the amount we have deposited upon our request. We understand that refunds will be in the amount deposited, less the amount of loss that may have occurred as a result of adverse collecting experience with our students. We further understand that if, in our judgment, the loan needs of our students do not

[28] 1964 PA 218; MCLA 390.957; MSA 15.2097(7).
[29] 1965 PA 276; MCLA 390.957; MSA 15.2097(7).
[30] 1966 PA 60; MCLA 390.957; MSA 15.2097(7).
[31] 1969 PA 302; MCLA 390.957; MSA 15.2097(7).
[32] MCLA 390.957; MSA 15.2097(7).

justify a payment of the size we have made, the Authority, upon our request, will refund to us such portion of our payment as is considered by MHEAA as unencumbered and unused."

This agreement clearly spells out the terms upon which the deposits will be held by MHEAA. Deposits are entrusted to MHEAA to be used for the purposes of the act, but may be recalled by the college or university.

Therefore, it is my opinion that public and private college and university deposits are not "state money" and Const 1963, art 9, § 20 does not apply.

3. In 1964 the Michigan State Legislature appropriated $300,000.00 for the "Loan guarantee fund" and the appropriation act[33] included the following language:

"(The $300,000.00 herein appropriated to the guarantee fund shall be used to match deposits made by Michigan public and private colleges and universities.)"

The state appropriated matching portion of the loan guarantee fund belongs to the state department of education. Should the matching program finally run its course and be terminated, the money would remain with the state department of education.

It is my opinion that the amount appropriated pursuant to 1964 PA 259 is "state money" and subject to the limitation of Const 1963, art 9, § 20.

4. Pursuant to the federal Higher Education Act[34] Title IV-B, the Department of Health, Education and Welfare, Office of Education, Bureau of Higher Education entered into an agreement with Michigan Higher Education Assistance Authority regarding advances made to the Authority. This agreement, dated August 25, 1966, is entitled "Terms and Conditions Covering Advances Made Under Section 422 of the Act."[35]

Among the terms and conditions covering the advances are the following:

"NOW, THEREFORE, in order to establish the terms and conditions on the basis of which any such advances will be made by the Commissioner to the Agency and returned by the Agency to the Commissioner, it is agreed as follows:

"1. The Agency shall deposit such advances made by the Commissioner into a segregated fund, know (sic) as the *Fund For Payments To Local Banks* (hereinafter called the "Fund"), provided for under its Program, together with such sums as are (a) appropriated by the State for that purpose, (b) received by the Agency as loan insurance premiums, (c) received by the Agency through gift, grant, or by other means from other sources, (d) collected on defaulted loans after expenses of collection or (e) in the nature of interest or other earnings derived from the investment thereof.

"2. The assets of the Fund, which may be invested in such manner as is permitted under State law, will be used only to guarantee loans to students covered by the Agency's Program, to purchase promissory

[33] 1964 PA 259.

[34] PL 89-329, November 8, 1965 (H.R. 9567).

[35] Higher Education Act of 1965, Title IV-B, PL 89-329, 20 USC 1072.

> notes evidencing such loans as may be in default, to refund over payment of insurance premiums, and to repay such advances made by the Commissioner pursuant to these Terms and Conditions, except that loan insurance premiums and interest and other earnings of the Fund may also be used for expenditures necessary for the proper and efficient administration of the Program.
>
> "3. The Commissioner may call upon the Agency for repayment of part or all of any sums advanced to the Agency hereunder, at such times and to the extent that he determines, in the light of the maturity and solvency of the Fund and after taking into account the Agency's requirements for its then outstanding obligations as well as its requirements for future loans and commitments based on its prior performance and established trends, that to do so will best carry out the purposes of the Act. Such repayment shall be made to the U.S. Office of Education or to such other State or nonprofit private institutions or organizations as may be designated by the Commissioner."

Thus by agreement the advances are subject to being recalled and therefore do not belong to the Authority. Supporting this position, it has been held that "the Federal funds are impressed with a trust and must be used by state agencies in accordance with Federal guidelines and for the purposes for which the funds were granted."[36]

Therefore, it is my opinion that advances made by the Federal government to guarantee student loans are not "state money" and not subject to the limitation of Const 1963, art 9, § 20.

5. In 1968 the Legislature appropriated $700,000.00 to the state department of education for the "Guaranteed loan program."[37] This amount matched the amount advanced by the federal government pursuant to the Higher Education Act and is "unrestricted" because there is no requirement for matching by the colleges and universities. Should the loan guarantee program be terminated and the advances returned to the U. S. Commissioner of Education as per agreement, the appropriated money would remain with the Department of Education.

Therefore, it is my opinion that the amount appropriated pursuant to 1968 PA 312 is "state money" and subject to the limitation of Const 1963, art 9, § 20.

6. Moneys in the "Reserve" fund are being invested in certificates of deposit. Interest earned is part of the "Reserve" fund and is used to guarantee loans, purchase defaulted loans, repay advances if requested and for expenditures necessary for the proper and efficient administration of the program. The Department of Education has informed this office that to date all guarantees have been paid from the interest earnings portion of the "Reserve" fund. Neither the "Agreement To Deposit Funds" by the colleges and universities nor the "Terms and Conditions Covering Advances Made" by the federal government require any interest payments on their deposits and advances. Therefore any earnings on invested funds

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[36] *Traverse City School District* v *Attorney General*, 384 Mich 390, 423 (1971).
[37] 1968 PA 312.

become "unrestricted" funds and belong to the state department of education.

In view of the above it is my opinion that interest earned on investment of the "Reserve" fund is state money and subject to the limitation of Const 1963, art 9, § 20.

FRANK J. KELLEY,
*Attorney General.*

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REAL ESTATE BROKERS AND SALESMEN

**A person selling condominiums for another or as an owner as a principal vocation must hold a real estate license.**

Opinion No. 4757 October 19, 1973.

Beverly J. Clark, Director
Department of Licensing and Regulation
1033 South Washington Avenue
Lansing, Michigan 48926

Your predecessor has requested my opinion regarding the following questions:

> "1. Must a person, firm, partnership association, copartnership or corporation who performs any act, for which a real estate broker's license is required by Sections 2 and 3 of 306 PA 1919, as amended, be licensed as a real estate broker when such act is performed with respect to an 'apartment' in a 'condominium project' as defined in 229 PA 1963, as amended?
>
> "2. Must a person who performs any act for which a real estate salesman's license is required by Sections 2 and 3 of 306 PA 1919, as amended, be licensed as a real estate salesman when such act is performed with respect to an 'apartment' in a 'condominium project' as defined in 229 PA 1963, as amended?
>
> "3. Must the deposits or other moneys accepted by a real estate broker or real estate salesman in condominium 'apartments' or 'condominium' transaction be accepted, deposited, retained, and accounted for in compliance with Sections 13(j) (1) (2) (3) (4) and (5) of 306 PA 1919, as amended?"

The terms "apartment" and "condominium" are defined in 1963 PA 229, as amended; MCLA 559.1 *et seq*; MSA 26.50(1) *et seq*, hereinafter referred to as the Horizontal Real Property Act, in section 2 thereof as follows:

> "(a) 'Apartment' means an enclosed room or rooms constituting a single unit and the space enclosed thereby which occupies all or part of a floor or floors in a building of 1 or more floors or stories regardless of whether it be destined for residence, for office, for the operation of any industry or business, or for any other type of independent use, provided it has a direct exit to a thoroughfare or to a