Act, *supra,* bans participation in the retirement system by any officer or employee:

> ". . . who is included as an active member in any other pension plan or retirement system supported in whole or in part from the funds of the participating municipality . . . ."

Since a township's contract pension plan under 1960 PA 27, *supra,* must be open to all officers and employees, any officer or employee who takes part in the contract plan would, thereupon, be denied participation in the retirement system. See also, 1 OAG, 1957-1958, No 2,887, p 105 (March 12, 1957).

It is, therefore, my opinion that a township may provide a contract pension plan, even though it is a member unit of the retirement system established by the Municipal Employees' Retirement Act, *supra.* However, no township officer or employee may participate in both.

In summary, 1960 PA 27, *supra,* is applicable to all townships, whether charter or not. The legislature has not imposed any limitations on a township's contributions toward the premium for a contract pension plan. The grant of prior service credit to elected officials who serve after the effecitve date of the pension plan does not violate the constitutional prohibition of "extra compensation." A contract pension plan under 1960 PA 27, *supra,* must apply equally to all township officials and full-time employees. There is no legal bar against the establishment of a contract pension plan by a township which is already a member unit of the retirement system, established by the Municipal Employees' Retirement Act, *supra,* although no officer or employee may participate in both.

FRANK J. KELLEY,
Attorney General.

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CONSTITUTION: Uniform Rule of Taxation.

The act authorizing differential school millage within the same school district has been rendered unconstitutional by the simultaneous adoption of the 1963 constitutional provision for uniformity of taxation, Const 1963, art 9, § 3, and tax rate limitation, Const 1963, art 9, § 6.

Opinion No. 4817 June 24, 1974.

Honorable William L. Jowett
House of Representatives
State Capitol
Lansing, Michigan

You request my opinion whether 1933 PA 162; MCLA 211.251, *et seq.;* MSA 15.511 *et seq.;* is still viable or if it has been rendered unconstitutional by the popular ratification of the 1963 Const, art 9, § 3.

Const 1963, art 9, § 3, provides:

> "The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not, after January 1, 1966, exceed 50 percent; and for a system of equalization of assessments. The legislature may provide for alternative means of taxation of designated real and tangible personal property in lieu of general ad valorem taxation. Every tax other than the general ad valorem property tax shall be uniform upon the class or classes on which it operates."

Const 1963, art 9, § 6, in pertinent part provides:

> "Except as otherwise provided in this constitution, the total amount of general ad valorem taxes imposed upon real and tangible personal property for all purposes in any one year shall not exceed 15 mills on each dollar of the assessed valuation of property as finally equalized. Under procedures provided by law, which shall guarantee the right of initiative, separate tax limitations for any county and for the townships and for school districts therein, the aggregate of which shall not exceed 18 mills on each dollar of such valuation, may be adopted and thereafter altered by the vote of a majority of the qualified electors of such county voting thereon, in lieu of the limitation hereinbefore established. These limitations may be increased to an aggregate of not to exceed 50 mills on each dollar of valuation, for a period of not to exceed 20 years at any one time, if approved by a majority of the electors, qualified under Section 6 of Article II of this constitution, voting on the question."

1933 PA 162, *supra,* provides for differential millages within a school district lying partly within and partly without the limits of a municipal corporation. It was upheld in *Thoman* v *Lansing,* 315 Mich 566; 24 NW 2d 213 (1946). An analysis of *Thoman* may be found in an opinion of the Attorney General. II OAG, 1956, No. 2,722, pp 526-527 (September 10, 1956). It notes the dissent of Mr. Justice Sharpe, who had stated:

> " 'The effect of this act [1933 PA 162] is to authorize two rates of taxation within a single taxing unit. The act offends the uniform rule of taxation and as such is unconstitutional.' * * *[Bracketed material added]

The Attorney General ruled that the majority holding of the Court made

> "* * * no attempt to dispute the statement of Justice Sharpe that the uniform rule of taxation is offended by the act, ***. While admitting the rule of uniformity is transgressed by what was done in the *Thoman case,* the majority of the court proceeds to justify such transgression on the theory that the right to transgress the uniform rule is essential to the full enjoyment by the City of Lansing of the rights of taxation conferred upon it by the 15 mill amendment, which

being later as to time of adoption takes precedence over the earlier provisions in the Constitution requiring uniformity. * * *"

The opinion makes the following observation:

"The case turned on the fact that the 15 mill amendment was later as to time of adoption than the uniform clause and thereby rights granted a city by it prevailed over the uniformity clause." P 528 of the opinion.

The prevailing opinion in *Thoman, supra,* did not attempt to harmonize the two constitutional provisions commonly known as the "uniformity clause" and the "15-mill amendment" but, instead, held that the 15-mill amendment, being later as to time of adoption, repealed the uniformity clause by implication.

The *Thoman* opinion endorsed the levy of higher school millage within the city portion of a school district than in the township portions of the district and thus, effectively ratified the unequal treatment of taxpayers.

Since the date of the *Thoman* opinion, the electorate has adopted a new Constitution, which contains a tax uniformity clause in Const 1963, art 9, § 3, and the 15-mill tax limitation in Const 1963, art 9, § 6. The rationale of the *Thoman* majority, which upheld 1933 PA 162, *supra,* because of the later adoption of the 15-mill limitation (Const 1908, art 10, § 21, added by the people in 1932), holding that it repealed the uniformity clause (Const 1908, art 10, § 3, adopted as part of the 1908 Constitution), is no longer viable. The uniformity clause and tax limitation of the 1963 Constitution were born simultaneously. Their simultaneous adoption obviates any argument that one is preferred to the other.

I have ascertained that the subject matter of your inquiry relates to the levy of school taxes by the Marysville public schools. The district includes the territory of the city of Marysville and portions of four townships. The townships are guaranteed the allocation of one of the basic 15 mills by the Property Tax Limitation Act.[1] The city of Marysville does not share in allocated millage, raising all of its property tax revenue pursuant to its charter provisions. If 1933 PA 162, *supra,* were constitutionally valid, the one mill allocated to the townships would be added to the school millage levied against property owned by city residents, thereby burdening them with a higher school millage than property owners in the township portions of the school district.

It is my opinion that such a levy of differential school millage within the same school district would violate the tax uniformity clause of the Michigan Constitution. Const 1963, art 9, § 3. This constitutional provision requires that the same amount of millage be spread throughout the same school district.

FRANK J. KELLEY,
Attorney General.

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[1] 1933 PA 62, § 11(d); MCLA 211.211; MSA 7.71.