shall not be effective until the proposed rule is promulgated and effective in accordance with Act No. 306 of the Public Acts of 1969, as amended.

"(5) An ordinance which is the same as a rule which is suspended by the legislature, or amended or repealed by the commission, shall likewise be suspended, amended or repealed. The governing body, by majority vote, may repeal the ordinance at any time.

"(6) Local law enforcement officers may enforce ordinances enacted pursuant to this section and state and county enforcement officers shall enforce rules which are promulgated pursuant to this section."

FRANK J. KELLEY,
*Attorney General.*

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BUDGET: Executive order reductions.

GOVERNOR: Executive order reductions.

SCHOOLS AND SCHOOL DISTRICTS: Executive order reducing state school aid appropriations.

STATE CONSTITUTION: Executive order reductions.

Notwithstanding the absence of implementing procedural legislation the Governor may, with the approval of the appropriations committees, reduce state school aid appropriations under Const 1963, art 5, § 20.

The Governor may, with the approval of the appropriating committees, reduce state school aid appropriations under Const 1963, art 5, § 20, in a manner that substantially alters the allocation pattern set forth in the state school aid appropriation statute.

The Governor may, with the approval of the appropriations committees, reduce state school aid appropriations under Const 1963, art 5, § 20, in a manner that requires school districts to use their locally raised tax revenues to fund educational programs required by state law.

Opinion No. 4917 December 24, 1975.

Honorable Donald E. Bishop
State Senator
The Capitol
Lansing, Michigan

Honorable Joseph Forbes
State Representative
The Capitol
Lansing, Michigan

Honorable Daniel Cooper
State Senator
The Capitol
Lansing, Michigan

Honorable Ruth B. McNamee
State Representative
The Capitol
Lansing, Michigan

Honorable James Defebaugh
State Representative
The Capitol
Lansing, Michigan

Honorable William B. Fitzgerald
State Senator
The Capitol
Lansing, Michigan

Honorable Matthew McNeeley
State Representative
The Capitol
Lansing, Michigan

You have requested my opinion on the following questions:

"1. Does the Governor, with the approval of the appropriating committees of the House and Senate, have the power under Const 1963, art V § 20, to reduce the expenditures authorized by 1972 PA 258, 1974 PA 242 and 1975 PA 261 for aid to public schools, where the legislature has not enacted a general law describing the procedures to be applied and followed in making such a reduction and where the affected appropriations acts do not provide such procedures?

"2. Does the Governor, with the approval of the appropriating committees of the House and Senate, have the power under Const 1963, Art V § 20, to reduce the expenditures authorized by 1972 PA 258, 1974 PA 242 and 1975 PA 261 for aid to public schools in a manner which substantially alters the pattern of allocation authorized by the legislature as a whole?

If your answer to either of the foregoing questions is affirmative, I would appreciate your directing your attention to the following additional question:

"3. Does the Governor, with the approval of the appropriating committees of the House and Senate, have the power under Const 1963, Art V § 20, to order reductions in the expenditures authorized by 1972 PA 258, 1974 PA 242 and 1975 PA 261 for aid to public schools by adopting a formula which requires some school districts to divert locally raised tax revenues to support educational programs which have been instigated or mandated by the state?"

Your questions will be addressed and answered seriatim.

As noted in your first question, the legislature has not enacted a general statute prescribing the procedures to be employed in connection with executive order reductions under Const 1963, art 5, § 20. Further, the statute appropriating state school aid funds to school districts, 1972 PA 258, as amended, MCLA 388.1101 *et seq;* MSA 15.1919(501) *et seq.* referred to hereinafter as the Bursley Act, contains no language prescribing the procedures to be employed in connection with executive order reductions under Const 1963, art 5, § 20.[1]

[1] However, other appropriation acts for fiscal 1975-1976 contain identical language prescribing procedures to be employed with regard to reducing expenditures under Const 1963, art 5, § 20. See 1975 PA 255, § 12, and 1975 PA 252, § 12.

To answer the question of whether the lack of legislation prescribing reduction procedures with regard to the state school aid appropriation precludes a reduction in such appropriation under Const 1963, art 5, § 20, it is first necessary to examine the constitutional provision in question. Const 1963, art 5, § 20 states:

> "No appropriation shall be a mandate to spend. The governor, with the approval of the appropriating committees of the house and senate, shall reduce expenditures authorized by appropriations whenever it appears that actual revenues for a fiscal period will fall below the revenue estimates on which appropriations for that period were based. Reductions in expenditures shall be made in accordance with procedures prescribed by law. The governor may not reduce expenditures of the legislative and judicial branches or from funds constitutionally dedicated for specific purposes." Const 1963, art 5, § 20

The accompanying Address to the People reads as follows:

> "This is a new section designed to provide for executive and legislative controls over state expenditures. The first sentence is intended to cover situations in which unforeseen efficiencies and economies might become possible.
>
> "The second sentence *requires* the governor, with the approval of the appropriating committees of the legislature, to reduce expenditures whenever it appears that revenues are not meeting estimates for a fiscal period. It is believed that this sentence removes any question as to the constitutionality of legislative control over general fiscal policy of the state. It would *require* current action to minimize impending year-end deficits.
>
> "The final sentence protects the separation of powers doctrine by preventing executive reduction of expenditures for the co-ordinate legislative and judicial branches of government. It would also prohibit the governor from making reductions in funds dedicated by the constitution for specific purposes." (emphasis added) 2 Official Record, Constitutional Convention 1961, p 3381

The courts have enunciated settled principles of law to be applied in interpreting constitutional provisions. The first rule is to give effect to the plain meaning of the words in the constitutional provision as comprehended by the people in adopting such provision. *Bond* v *Ann Arbor School District*, 383 Mich 693, 699; 178 NW2d 484, 487 (1970). In those instances where the constitutional language is ambiguous, resort may be had to the Address to the People and the debates of the constitutional framers. *Burdick* v *Secretary of State*, 373 Mich 578, 584; 130 NW2d 380, 382 (1964). The Address to the People derives its vitality from having been both approved by the convention delegates and widely distributed prior to adoption of the constitution by the electorate. The debates, containing the expressions of individual delegates to the constitutional convention, are particularly helpful in ascertaining intent only when they contain a recurring thread of explanation. *Regents of the University of Michigan* v *State of Michigan*, ... Mich ..., Slip Opinion issued October 28, 1975, at pp 3-4.

The second sentence of Const 1963, art 5, § 20 plainly mandates that the Governor, with the approval of the appropriations committees, must reduce expenditures authorized by appropriations whenever actual revenues will fall below the revenue estimates on which such appropriations were based. Mandatory constitutional provisions are presumed to be self-executing when they may be given effect without the need for additional legislation. This rule applies even though legislation may facilitate implementation of the constitutional provision in question. *Hamilton* v *Secretary of State,* 227 Mich 111, 116-117; 198 NW 843, 845 (1924). *Wolverine Golf Club* v *Secretary of State,* 24 Mich App 711, 725-726; 180 NW2d 820, 826 (1970), affirmed 384 Mich 261; 185 NW2d 392 (1971); OAG 1967-1968, No 4555, pp 36, 41-42 (April 12, 1967).

The mandatory, self-executing nature of the second sentence of Const 1963, art 5, § 20 is reinforced by the second paragraph of the Address to the People which, in commenting on such sentence, twice states that the Governor is *required* to take action to reduce expenditures to eliminate year-end deficits. Further, the convention delegates rejected an amendment to Committee Proposal 46d, which, as modified, became Const 1963, art 5, § 20. The rejected amendment would have given the Governor discretionary authority to reduce expenditures to preclude deficit spending. 1 Official Record, Constitutional Convention 1961, p 1666.

If the second sentence of Const 1963, art 5, § 20 is not self-executing, then the legislature may, by failure to enact any statutory provision prescribing reduction procedures, completely frustrate the constitutional mandate to reduce expenditures to preclude deficit spending. Or, as in the instant situation, the legislature may, by failing to enact reduction procedures with regard to the state school aid appropriation, effectively insulate such appropriation from reduction by the Governor with the approval of the appropriations committees.

However, the last sentence of Const 1963, art 5, § 20, expressly sets forth those funds that are immune from the executive order reduction process. Such funds include appropriations for the legislative and judicial branches of government and funds constitutionally dedicated for specific purposes.[2]

In this regard, it is instructive to note that, on two separate occasions, the convention delegates rejected amendments that would have immunized appropriations for public education, either in whole or in part, from reduction under Const 1963, art 5, § 20. 1 Official Record, Constitutional Convention 1961, pp 1666-1667, 1679-1680. Indeed, during the debates on the first of these amendments, Delegate Hannah opposed the amendment, stating that:

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[2] Thus, that portion of the state school aid appropriation comprised of constitutionally dedicated sales tax revenues, pursuant to Const 1963, art 9, § 11, is exempt from reduction under Const 1963, art 5, § 20. However, the additional general fund moneys appropriated in the state school aid appropriation to school districts are not exempt from reduction under Const 1963, art 5, § 20. See Section 11 of the Bursley Act, *supra.*

> "Mr. Chairman and members of the committee, of course, as the administrator of a university, I am sympathetic to the objective that Mr. Faxon has in mind. But in view of the very large percentage of all state expenditures that go for education, I cannot believe that in a time of real emergency if the state finds itself without sufficient revenues to take care of all of the cost of operation, I cannot believe that education should necessarily be a sacred cow that shouldn't be susceptible to reexamination of its expenditures too. . . ." 1 Official Record, Constitutional Convention 1961, p 1667.

As the last paragraph of the Address to the People accompanying Const 1963, art 5, § 20, makes clear, the last sentence of such constitutional provision is a limitation on the Governor's power to make reductions. In *Eastern Michigan University* v *Labor Mediation Board*, 384 Mich 561, 563-564, 566; 184 NW2d 921, 922, 923, the Michigan Supreme Court construed Const 1963, art 4, § 48, which provides that "[t]he legislature may enact laws providing for the resolution of disputes concerning public employees, except those in the state classified civil service." In doing so, the Court ruled that, with the exception of the express limitation as to employees in the state classified civil service, the legislature was free to enact legislation providing for the resolution of disputes concerning other public employees. So here, with the exception of the express limitation in the last sentence of Const 1963, art 5, § 20, concerning appropriations for the legislative and judicial branches and funds constitutionally dedicated for specific purposes, the Governor may, with the approval of the appropriations committees, reduce all other appropriations pursuant to Const 1963, art 5, § 20.[3]

The next inquiry is whether the legislature's failure to enact a statutory provision prescribing procedures with regard to executive reduction of state school aid appropriations, pursuant to the third sentence of Const 1963, art 5, § 20, precludes the Governor, with the approval of the appropriations committees, from reducing the general fund appropriation to school districts contained in the Bursley Act, *supra*. The law is settled that the phrase "prescribed by law," which is employed in the third sentence of Const 1963, art 5, § 20, means only that the details of implementation are left to the legislature. *Beech Grove Investment Co.* v *Civil Rights Commission*, 380 Mich 405, 418-419; 157 NW2d 213, 223-224 (1968).

In *Beech Grove*, *supra*, it was concluded that the duty of the Civil Rights Commission to investigate alleged discrimination was created by the Constitution itself. Although the legislature could prescribe the manner in which such duty was to be performed, the lack of legislation prescribing the manner of performing the duty to investigate alleged discrimination did not preclude the Commission from acting to investigate allegations of discrimination.

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[3] The convention delegates rejected an amendment that would have made the Governor's power to reduce expenditures to preclude deficits subject to the approval of a majority of both houses of the legislature. 1 Official Record, Constitutional Convention 1961, pp 1669-1670.

In the context of Const 1963, art 5, § 20, the Governor, with the approval of the appropriations committees, may act to reduce expenditures authorized by state school aid appropriations in the absence of implementing procedural legislation in the Bursley Act, *supra*. This conclusion is further supported by the Address to the People which "requires" the Governor to act and is silent as to the third sentence of the constitutional section dealing with the legislature's authority to prescribe procedures for the executive order reduction process.[4]

Moreover, in the 1974-1975 fiscal year, by virtue of Executive Order 1974-11, dated December 16, 1974, which was approved by the appropriations committees, the Governor reduced general fund appropriations contained in the Bursley Act, *supra*. At the time of such reduction the legislature had not enacted either a general statute or an amendment to the Bursley Act, *supra*, that purported to prescribe procedures for reductions in the state school aid appropriation, pursuant to Const 1963, art 5, § 20. Subsequently, a school district challenged the validity of such executive order reduction in the courts. Both the Michigan Court of Appeals and the Michigan Supreme Court sustained the validity of the executive order reduction in general fund moneys appropriated by the Bursley Act, *supra*.[5]

A letter opinion of this office to Senator Zollar, under date of December 11, 1974, dealt with the executive order reduction procedures set forth in 1974 PA 243, § 13. Such procedures provided for two submissions of proposed executive order reductions by the Governor to both appropriations committees. Beyond that, the statute was silent. The opinion concluded, at p 3 , as follows:

> "I am therefore of the opinion that the governor and the appropriations committees remain obligated under Const 1963, art 5, § 20, to continue conferring until the appropriate reductions are effectuated, and that they have the power to do so under this constitutional provision. Thus, in the event of legislative committee disapproval of

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[4] The colloquy between convention delegates Austin and Martin concerning the meaning of the language in Committee Proposal 46d that "such reductions in expenditures [are] to be made in accordance with procedures established by law" occurred at a time when Committee Proposal 46d had not yet been amended to require the Governor's reductions in expenditures be approved by both appropriations committees. Further, the language "established by law" was later changed to "prescribed by law." 1 Official Record, Constitutional Convention 1961, pp 1635, 1659, 1668-1670.

[5] In *Roseville Community School District* v *State Treasurer*, Michigan Court of Appeals No. 23457, unreported order of May 13, 1975, leave to appeal denied, 394 Mich 820; NW2d (1975), rehearing denied Mich NW2d (September 24, 1975), the plaintiff did not expressly discuss the issue of whether the executive order reduction was valid in view of the absence of legislation prescribing procedures for executive order reductions in funds appropriated by the Bursley Act, *supra*.

the first two recommendations by the governor, the parties must continue their attempts to develop a mutually agreeable method of reducing expenditures."[6]

In summary, the second sentence of Const 1963, art 5, § 20, is self-executing, thereby requiring the Governor, with the approval of the appropriations committees, to reduce expenditures whenever actual revenues will fall below estimated revenues for the fiscal year in question. Further, the only appropriations immune from the executive order reduction process are those set forth in the last sentence of Const 1963, art 5, § 20. Pursuant to the third sentence of such constitutional provision, the legislature should enact a general statute setting forth the prescribed procedures to be followed in effectuating executive order reductions.[7] However, such implementing statute may neither exempt appropriations from the executive order reduction process nor set forth the amount by which any particular appropriation should be reduced. The legislative authority is limited, under Const 1963, art 5, § 20, to setting forth the procedural details of implementation. Further, failure to enact legislation prescribing executive order reduction procedures does not preclude the Governor, with the approval of the appropriations committees, from fulfilling the self-executing mandate of Const 1963, art 5, § 20, to reduce expenditures to prevent deficit spending.

In answer to your first question, it is my opinion that, notwithstanding the absence of a general statute or language in the Bursley Act, *supra*, prescribing procedures for an executive reduction in funds appropriated by the Bursley Act, *supra*, the Governor may, with the approval of the House and Senate appropriations committees, reduce the general fund appropriations contained in the Bursley Act, *supra*.

Responding to your second question, it must first be observed that any executive order reductions necessarily reduce the total dollar amount of the appropriation in question. In light of the reduction in the total dollar amount appropriated, it would be a rare instance in which the pattern of allocation was not substantially altered by such reduction. In reducing expenditures authorized by appropriations, new priorities must be established in light of the new lower total dollar amount of the appropriation to be allocated. This could include, for example, entirely eliminating line item appropriations for specific programs or construction projects within a particular appropriations statute.

Neither the language of Const 1963, art 5, § 20, nor the accompanying Address to the People contain limiting language directing the Governor and the appropriations committees to adhere to the allocation patterns set forth in the appropriations statutes that are the subject of executive order

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[6] The language in OAG, 1967-1968, No 4576, p 17 at p 20 (February 3, 1967), regarding a lack of statutory procedures for reductions in Medicaid Funds was not necessary to the result reached therein for the reason that there had been no showing that actual revenues would fall below estimated revenues as contemplated by Const 1963, art 5, § 20.

[7] See "Initial Recommendations of the Attorney General on Legislative Implementation and Statutory Revision Under the Constitution of 1963," June 27, 1963, p 49.

reductions. The last sentence of Const 1963, art 5, § 20 sets forth those appropriations that are exempt from the executive order reduction process. Beyond that, the nature and substance of appropriations to be reduced and the method of making such reductions are reposed in the sound discretion of the Governor and the appropriations committees.

However, in making executive order reductions under Const 1963, art 5, § 20, the Governor and the legislative appropriations committees may not exercise their discretionary authority in a manner that is arbitrary and capricious. For example, executive order reductions would be subject to the Fourteenth Amendment Equal Protection Clause prohibition against invidiously discriminatory classifications. However, the law is settled that state systems of financing public education are not subject to strict judicial scrutiny. Rather, they are subject only to the traditional test that the classification in question must rest upon some reasonable basis. *San Antonio Independent School District* v *Rodriguez,* 411 US 1, 40, rehearing denied, 411 US 959 (1973).

In answer to your second question, it is my opinion that executive order reductions of state school aid appropriations agreed upon by the Governor and the Senate and House appropriations committees may substantially alter the pattern of allocations provided in the Bursley Act, *supra.* However, such reductions are subject to the constitutional prohibition against unreasonable classifications contained in the Fourteenth Amendment Equal Protection Clause.

The third question relates to the validity of executive order reductions in state school aid appropriations that may have the effect of requiring school districts to expend their locally raised tax revenues to fund educational programs mandated by state law. In response, it must first be observed that the 1963 Michigan Constitution contemplates a system of public school finance that includes both locally raised property tax revenues and state school aid appropriations to school districts. See, respectively, Const 1963, art 9, § 6 and art 9, § 11.

In Michigan the law is settled that school districts are local state agencies of legislative creation. The property of school districts is public property that must be used in conformity with state law. Further, the boards of education of school districts have only such powers as are expressly or by reasonably necessary implication conferred upon them by statute. *Attorney General, ex rel Kies* v *Lowrey,* 131 Mich 639, 644; 92 NW 289, 290 (1902), aff'd 199 US 233 (1905); *School District of the City of Lansing* v *State Board of Education,* 367 Mich 591, 595; 116 NW2d 866, 868 (1962); *Senghas* v *L'Anse Creuse Public Schools,* 368 Mich 557, 560; 118 NW2d 975, 977 (1962).

Thus, school districts may be compelled to use their property tax revenues to fund educational programs mandated by state law. An executive order reduction in state school aid appropriations contained in the Bursley Act, *supra,* that has the approval of both appropriations committees represents a lawful exercise of the power of the Governor and such committees under Const 1963, art 5, § 20. If such an executive order reduction has the effect of requiring school districts to use local property tax revenues

to fund educational programs required by state law, such as mandatory special education,[8] such result is not contrary to law.

Pursuant to Const 1963, art 5, § 20, the Governor may, with the approval of the appropriating committees, reduce state school aid appropriations in the Bursley Act, *supra,* in a manner that has the effect of requiring school districts to use locally raised property tax revenues to fund educational programs required by state law.

In summary, the current economic conditions have resulted in a decrease in anticipated state revenues. The Governor, with the approval of the House and Senate appropriations committees, must, therefore, reduce expenditures authorized by appropriations to preclude deficit spending as required by Const 1963, art 5, § 20. In the executive order reduction process, the Governor and the appropriations committees have considerable discretion in making such reductions with the exception of those appropriations immune from reduction by the last sentence of Const 1963, art 5, § 20. This opinion deals with the legal questions raised herein concerning reduction in state school aid funds appropriated by the Bursley Act, *supra.* The wisdom of any particular executive order reduction is left to the sound discretion of the Governor and the appropriations committees under Const 1963, art 5, § 20.

FRANK J. KELLEY,
*Attorney General.*

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**CONSTITUTIONAL LAW: Titles to Statutes**

**LIQUOR CONTROL COMMISSION: Issuances of Licenses**

**1975 PA 254, § 26, which imposes the duty on the Liquor Control Commission to make a survey of the Upper Peninsula relative to the need of additional public licenses for the sale of alcoholic liquor for consumption on the premises and provides that the Commission may issue additional licenses is unconstitutional as violative of Const 1963, art 4, § 24.**

Opinion No. 4907 January 7, 1976.

Mr. Stanley G. Thayer, Chairman
Michigan Liquor Control Commission
506 South Hosmer
Lansing, Michigan 48904

At a meeting of the Liquor Control Commission a resolution was adopted to seek my opinion as to the constitutionality of 1975 PA 254, § 26.

That section reads:

> "In addition to the requirements and duties of Act No. 8 of the Public Acts of the Extra Session of 1933, as amended, being sections 436.1 to 436.58 of the Michigan Compiled Laws the liquor control

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[8] MCLA 340.771a; MSA 15.3771(1).