

Finally, 1966 PA 277, § 7(c) provides that the council may:

"Hire a director and whatever additional staff is necessary to carry out its powers and duties, to be paid out of the appropriation to the council."

It is quite obvious that in the performance of its discretionary duties the council has the ability to hire and appoint a director and additional staff necessary to carry out both its mandated and its discretionary duties and functions.

Thus, apart from the invalidity of 1966 PA 277, § 6(a), I am unable to find any provision of the Consumers Council Act delineating its duties, powers and functions which constitutes the mingling of the executive and legislative power prohibited by the Constitution.

Lastly, it is a general rule of construction that if a portion of an act is invalid and the other portions or provisions of the act are not inoperable, only the invalid portion is excised as invalid. MCLA 8.5; MSA 2.216. See, also, *Coffman v State Board of Examiners in Optometry*, 331 Mich 582 (1951); OAG 1963-1964, No. 4156, p 79 (April 11, 1963); OAG 1947-1948, No. 617, p 486 (February 3, 1948).

Based on the foregoing, it is my opinion that the Michigan Consumers Council Act is, with the exception of section 6(a), a constitutional enactment by the legislature. It is my opinion that the act, again with the exception of 1966 PA 277, § 6(a), does not constitute a mingling of the executive powers with the legislative branch. It is therefore my opinion that, apart from 1966 PA 277, § 6(a), the Michigan Consumers Council Act is valid and enforceable to the extent stated herein.

FRANK J. KELLEY,  
*Attorney General.*

760520.1 \_\_\_\_\_

**UNEMPLOYMENT COMPENSATION LAW:**

Retirement Reduction Provisions  
Applicability of Restitution Provisions

**SCHOOL DISTRICT:** Applicability of retirement reduction provisions of the Michigan Employment Security Act.

**PUBLIC SCHOOL EMPLOYEES RETIREMENT FUND:** Retroactive retirement benefits.

The contributions made by the State into the Public School Employees' Retirement Fund for each school employee may not be treated as contributions of the school districts. As a result, the retirement benefit reduction provisions in MCLA 421.27(f)(1); MSA 17.529(f)(1) may not be applied in computing the weekly amount of unemployment benefits payable to unemployed employees of school districts.

The Michigan Employment Security Commission is required to consider whether the restitution provisions of Section 62(a) of the act are applicable

when an employee receives retroactive retirement benefits to cover the same period for which he received unemployment compensation benefits.

Retroactive retirement benefits may not be attached or withheld for the purpose of offsetting unemployment compensation benefits received during the period for which the retroactive benefits are paid.

Opinion No. 5010

May 20, 1976.

Representative Bobby D. Crim  
Speaker of the House  
House of Representatives  
State Capitol Building  
Lansing, Michigan 48901

You have requested my opinion on the following questions:

1. "May the amount of the state's contributions to the public school employees' retirement fund for each school employee be treated as the contribution of a chargeable employer (i.e., the school district) so that pension benefit offsets provided in MCL 421.27(f)(1) may be applied?"
2. "May retroactive retirement benefits be attached for the purpose of offsetting unemployment compensation benefits received during the period for which the retroactive benefits are collected?"

School Districts are subject to the provisions of the Michigan Employment Security Act,<sup>1</sup> hereinafter referred to as the Act, by virtue of MCLA 421.42(8); MSA 17.545(8) and MCLA 421.13i; MSA 17.513(9).

MCLA 421.42(8); MSA 17.545(8) provides as follows:

"Service performed by an individual in the classified civil service of this state and service performed by an individual for a school district, a community college district, a school or educational facility owned or operated by the state other than an institution of higher education, or a political subdivision of the state, except a political subdivision which has a local unemployment compensation system as provided in section 13j, is employment subject to this act."

MCLA 421.13i; MSA 17.513(9) requires a school district to reimburse the Michigan Employment Security Commission, hereinafter referred to as the Commission, for unemployment compensation benefits paid by the Commission to claimants who are entitled to benefits chargeable to it, unless the school district elects to pay contributions as a contributing employer. A contributing employer is required to pay the Commission as a tax a percentage of the taxable wages paid each employee, whereas a reimbursing employer is required to reimburse the Commission for the actual amount of unemployment benefits paid a claimant chargeable to it.

Bearing in mind the fact that MCLA 421.13g; MSA 17.513(7) requires the State of Michigan to participate in the unemployment compensation program for the benefit of its employees as a reimbursing employer, it is

<sup>1</sup>1936 PA 1, Ex Sess, as amended; MCLA 421.1 *et seq*; MSA 17.501 *et seq*.

clear that the Act treats the State as an employer apart from school districts. It necessarily follows that employees of the latter cannot be considered employees of the State.

It is further to be noted in connection with the question which your letter presents that MCLA 421.27(f)(1); MSA 17.529(f)(1) provides:

“Notwithstanding any inconsistent provisions of this act, the weekly benefit rate of each individual who is receiving or will receive a ‘retirement benefit’ as defined in paragraph (4) shall be adjusted as provided in subparagraphs (a), (b) and (c). However, an individual’s extended benefit account and an individual’s weekly extended benefit rate under section 64 shall be established without any reduction under this subsection. Except as herein otherwise provided, all the other provisions of this act shall continue to be applicable in connection with the benefit claim of such retired persons.

“(a) If and to the extent that unemployment benefits payable to him under this act would be chargeable to an employer who has contributed to the financing of a retirement plan under which the claimant is receiving or will receive a retirement benefit yielding a pro rata weekly amount equal to or larger than his weekly benefit rate as otherwise established under this act, the claimant shall not receive any unemployment benefits which would be chargeable to said employer under this act.

“(b) If and to the extent that unemployment benefits payable to him under the act would be chargeable to an employer who has contributed to the financing of a retirement plan under which the claimant is receiving or will receive a retirement benefit yielding a pro rata weekly amount less than his weekly benefit rate as otherwise established under this act, then the weekly benefit rate otherwise payable to the claimant and chargeable to said employer under this act shall be reduced by an amount equal to the pro rata weekly amount (adjusted to the next lower multiple of \$1.00) which he is receiving or will receive as such retirement benefit.

“(c) If the unemployment benefit payable to him under this act would be chargeable to an employer who has not contributed to the financing of a retirement plan under which the claimant is receiving or will receive a retirement benefit, then the weekly benefit rate of such claimant as otherwise established under this act shall not be reduced because of the receipt by him of such retirement benefit.

“(d) \* \* \* \*”

Further, MCLA 421.27(f)(4)(b); MSA 17.529(f)(4)(b) provides as follows:

“(b) If a benefit such as described in subparagraph (a) is payable or paid to the individual under a plan to which he has contributed:

“(i) Less than half of the cost of the benefit then only half of the benefit shall be treated as a retirement benefit.

“(ii) Half or more of the cost of the benefit, then none of the benefit shall be treated as a retirement benefit.”

From the foregoing statutory provisions, it is apparent that a reduction of unemployment benefits may occur only when the *chargeable employer*—whether a reimbursing or contributing one—has contributed to the financing of the retirement plan under which the claimant is receiving or will receive a retirement benefit. Under the provisions of Section 27(f)(4)(b), however, if the chargeable employer and the employee both contribute to the cost of the retirement benefit then the formula set forth therein must be applied in determining the amount of unemployment benefits an individual retiree may receive. In situations where the chargeable employer contributes but the employee does not, then, manifestly, a reduction of benefits, as noted above, will occur. Where the employee contributes to the cost of the benefit, but the chargeable employer does not, then a reduction will not occur.

Under the provisions of MCLA 38.201(w); MSA 15.893(1)(w) a reporting unit,<sup>2</sup> other than a school district of the first class,<sup>3</sup> effective July 1, 1977, may not withhold any retirement contributions from any member's compensation earned after that date. Between July 1, 1974 and July 1, 1977, however, a school district is required under the provisions of MCLA 38.221; MSA 15.893 (21) to either contribute five per cent of the aggregate annual compensation of all employees who are members under a noncontributory plan, or to deduct from the compensation of a member for each payroll period subsequent to the date that he becomes a member, five per cent of his annual compensation earned after July 1, 1974.

In addition to the employer and employee contributions, the State of Michigan by virtue of the provisions of MCLA 38.227; MSA 15.893(27); and MCLA 38.345; MSA 15.893(85) is required to contribute to the retirement plan of public school employees. However, since the State of Michigan is not the chargeable employer of public school employees, its contributions to the retirement fund of the said employees may not, pursuant to MCLA 421.27(f)(1); MSA 17.529(f)(1), be used as a basis for the reduction of benefits.

When the unemployment benefits of public school employees are chargeable to school districts which do not contribute to the financing of the retirement plan the weekly rate of unemployment benefits payable to their

<sup>2</sup> Under MCLA 38.201(u); MSA 15.893(1)(u) a "reporting unit" is defined as follows:

"'Reporting unit' means a board of education, junior college, community college, university, or other agency having employees on its payroll who are members of this retirement system as defined in subdivision (f). The reporting unit shall be the employer as used in this act."

<sup>3</sup> 1945 PA 136, Ch I, MCLA 38.201; MSA 15.893(1) created the so-called "Chapter 1" or "outstate" retirement system for all public school employees other than those employed by a school district of the first class. 1945 PA 136, Ch II; MCLA 38.301 *et seq*; MSA 15.893(41) *et seq*, created the so-called "Chapter 2" or "Detroit" retirement system for all employees of a school district of the first class. MCLA 340.182; MSA 15.3182 defines a school district of the first class as those cities which attain a school census of 120,000 or more children between the ages of 5 and 20—this presently includes only the City of Detroit.

employees may not be reduced pursuant to MCLA 421.27(f)(1); MSA 17.529(f)(1). Unemployment benefits may not, therefore, be reduced in those instances where the school district chooses not to contribute to the fund itself but instead chooses to deduct five per cent of its employees' annual compensation earned after July 1, 1974. (Per MCLA 38.221; MSA 15.893(21).) If, however, the school district after July 1, 1974, chooses to operate under a noncontributory plan under which it, rather than the employees contribute to the pension fund, then in those instances the weekly rate of unemployment benefits payable to their employees may be reduced pursuant to the above-cited sections of the Act. As noted above, after July 1, 1977, school districts in the State of Michigan, with the exception of school districts of the first class, will not be permitted to deduct retirement contributions from their employees' annual compensation but must themselves contribute to the fund. At that point, therefore, the reduction provisions of the Act set forth above will be applicable to all retirees of school districts other than school districts of the first class.

The answer to your first question, therefore, is that the State's contribution to the Public School Employees' Retirement Fund for each school employee may not be treated as the contribution of the school district. As a result, the pension benefit reduction provision of MCLA 421.27(f)(1); MSA 17.529(f)(1) may not be applied based on the State's contribution to the Retirement Fund. These benefit reduction provisions are applicable, as indicated above, only when the chargeable employer (the school district) contributes to the retirement fund which must be determined on an individual basis.

With respect to your second question, there is no provision in the Public School Employees Retirement Act (1945 PA 136, as amended) which would authorize the attachment or withholding of retroactive retirement benefits for the purpose of offsetting unemployment compensation benefits received during the period for which the retroactive retirement benefits are paid. Such a procedure may not, therefore, be utilized.

Under the provisions of Section 62(a) of the Act, however, the Commission may recover unemployment benefits received by an individual if it determines that said individual is not entitled to them for any reason. Section 62(a) of the Act provides as follows:

"If the commission determines that any person has obtained benefits to which he is not entitled for any reason, the commission shall recover a sum equal to the amount so received by 1 or a combination of the following methods: (1) deduction from any benefits that may be or may become payable to the individual, or (2) payment by the individual to the commission in cash."

Section 62(f) provides as follows:

"The Commission shall take such action as may be necessary to recover all benefits improperly obtained or paid under this act and to enforce all forfeitures under the provisions of subsections (b), (c), and (d)."

If, therefore, the Commission determines that a school employee has received retroactive retirement benefits to cover the same period for which

he receives unemployment compensation benefits, it is required to consider whether the restitution provisions of Section 62(a) of the Act set forth above are applicable.

The answer to your second question, therefore, is that retroactive retirement benefits may not be attached or withheld for the purpose of offsetting unemployment compensation benefits received during the period for which the retroactive benefits are paid. The Commission may, however, recover the unemployment benefits paid to a school retiree if it subsequently determines, based upon his receipt of retroactive retirement benefits, that he was not entitled to the said benefits.

FRANK J. KELLEY,  
*Attorney General.*

760524.1

APPROPRIATIONS: Michigan travel bureau

APPROPRIATIONS: Continuing appropriations

MICHIGAN TRAVEL BUREAU: Appropriations for regional associations

The reductions in appropriations imposed upon the Michigan travel bureau by executive order promulgated pursuant to Const 1963, art 5, § 20, may reduce the sum appropriated for regional associations despite a statutory provision stating that "an amount not to exceed \$90,000" shall be made available annually by the Michigan travel commission to each of the regional associations.

Opinion No. 4997

May 24, 1976.

Honorable Michael J. O'Brien  
State Senator  
State Capitol Building  
Lansing, Michigan 48902

Honorable Casmer P. Ogonowski  
State Representative  
State Capitol Building  
Lansing, Michigan 48902

You have requested this office's opinion on the following:

1. Whether the Director of the Michigan Travel Bureau can reduce the regional tourist association grant from \$360,000 to \$340,200 in light of 1975 PA 145, § 6; MCLA 2.106; MSA 3.448(6).
2. Whether the \$250,000 appropriated for local convention bureaus in the Department of Commerce Appropriations Act, 1975 PA 254, is further subject to reduction under Executive Order 1975-12.

For the reasons enumerated below, I am of the opinion that the Director of the Michigan Travel Bureau may reduce the regional tourist association grant.