

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.

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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.

1975 PA 145 amended the title and sections 1, 2, 3 and 6 of 1945 PA 106, MCLA 2.101 *et seq*; MSA 4.448(1) *et seq*. As amended, 1945 PA 106 provides in part that it is:

"An act to enhance the economic viability of the state through development, improvement, and promotion of the travel, tourism and convention industry of the state; to create the Michigan travel commission and to prescribe its powers and duties; . . . to provide for appropriations in carrying out this act and allocation and disbursement of those appropriations; . . ."

By 1945 PA 106, § 2, *supra*, the Michigan travel commission is created within the Department of Commerce and consists of 13 members.

Relevant to the discussion is 1945 PA 106, § 6, *supra*, which states:

"Out of the appropriation made by the legislature an *amount not to exceed* \$90,000.00 shall be made available annually by the Michigan travel commission to each of the following regional associations: The upper Michigan tourist association, the west Michigan tourist association, the east Michigan tourist association and the southeast Michigan tourist association. On presentation of receipted vouchers showing the amount of money paid out by it for advertising the advantages of its region of the state, together with detailed information showing the various purposes for which the money was spent, payment shall be authorized in accordance with the accounting laws of the state to the association of 80% of the amount shown by such receipted vouchers. None of the funds in this section made available to the 4 regional associations shall be used to compensate any officers or employees of the association for salaries or expenses. (emphasis added)

By this provision, the legislature mandated an appropriation in an amount *not to exceed* \$90,000 to each regional association. This would, in effect, be multiplied out to provide for an amount *not to exceed* \$360,000 for the four regional associations. In view of the underscored language placing a limitation on the maximum which would be paid, the reduction from \$360,000 to \$340,200 does not conflict with the provisions of 1945 PA 106, § 6, *supra*.

Of the 5.5% reduction, 4.0% came into effect by virtue of 1975 PA 254, § 1, *supra*, which states in part:

"Of the general fund amounts . . . contained in this act each shall be reduced . . . by 4.0% in order to equal the amount of estimated revenue . . ."

A further 1.5% reduction was ordered by Governor Milliken acting pursuant to Const 1963, art 5, § 20 in Executive Order 1975-12. Such a reduction was constitutionally permissible inasmuch as the Governor properly implemented the expenditure reduction by obtaining the approval of the appropriating committees of the House and Senate.

In addition, the Michigan Supreme Court in *Board of Education of Oakland Schools v Superintendent of Public Instruction*, 392 Mich 613, 221 NW 2d 345 (1974), held that language such as that set forth in 1945 PA

106, § 6, *supra*, indicates only a desire on the part of the legislature to appropriate. The Court stated at page 621:

" . . . The Legislature would be, in effect, appropriating in advance of its ability to accurately forecast available revenues and would thereby be unable to match revenue with appropriations as required by Const 1963, art 4, § 31. In addition, such prospective appropriations would force the Governor to approve or veto the expenditure far in advance of his ability to assess the fiscal needs of the state. See generally, Const 1963, art 5 §§ 18 and 19. We do not believe that the Legislature intended either of these results.

"In sum, we believe that the most reasonable construction that can be made of the legislative intent behind the enactment of 1970 PA 100, § 16a(5) is to find that this section expressed only a desire to appropriate in the future. This construction avoids any conflict with the constitutional requirements binding upon both the Legislature and the Governor, and, in our opinion, furthers the comity between these two branches that is necessary for the responsible functioning of the state government."

I am of the opinion that the reasoning of the Michigan Supreme Court in the above case would lead to the conclusion that 1945 PA 106, § 6, *supra*, is merely an expression of a desire to appropriate in the future. Therefore, you are advised that the Director of the Michigan Travel Bureau may reduce the regional tourist association grant from \$360,000 to \$340,200 pursuant to 1975 PA 254, § 1, *supra*, and Executive Order 1975-12.

The \$250,000 appropriated in the Department of Commerce Appropriations Act for local convention bureaus was similarly subject to the 5.5% reduction.

In conclusion, it is my opinion that the 5.5% reductions for the regional tourist association grant and for the local convention bureaus were properly implemented.

FRANK J. KELLEY,
Attorney General.