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RECORDS AND RECORDATION: Financial records of state colleges and universities.

COLLEGES AND UNIVERSITIES: Financial records of state colleges and universities.

CONSTITUTION OF MICHIGAN: art 9, § 23.

The financial books and records of state institutions of higher education are public records. The governing body of a state institution of higher education may adopt reasonable restrictions with regard to examination, inspection and copying of its records to protect them from loss or destruction and to permit the effective functioning of the institution.

Opinion No. 5042

July 28, 1976.

Hon. Howard Wolpe
State Representative
The Capitol
Lansing, Michigan

You have requested my opinion on the following questions:

- “1. Are the records of receipts and expenditures, including transfers between various accounts, as maintained by Western Michigan University, records of public information?
2. Do taxpayers have the right to inspect the financial books and records of higher education institutions organized under Article 8 of the Constitution of 1963 to ascertain the financial condition of those institutions and to obtain the details of their utilization of funds?
3. If the answer to question number 2 is in the affirmative, are there any conditions which must be satisfied prior to the exercise thereof, and are there any financial records which may not be inspected?”

The fundamental rule regarding the right of persons to inspect public records was enunciated in the case of *Burton v Tuite*, 78 Mich 363, 375-376; 44 NW 282, 285 (1889), where the court stated:

“ . . . It is plain . . . that the Legislature intended to assert the right of all citizens, in the pursuit of a lawful business, to make such examinations of the public records in public offices as the necessity of their business might require, subject to such rules and restrictions as are reasonable and proper under the circumstances. . . .”

Nowack v Auditor General, 243 Mich 200, 203-204; 219 NW 749, 750 (1928), carried this idea forward adding:

“ . . . If there be any rule of the English common law that denies the public the right of access to public records, it is repugnant to the spirit of our democratic institutions. Ours is a government of the people. Every citizen rules. . . . Undoubtedly, it would be a great surprise to the citizens and taxpayers of Michigan to learn that the law denied them access to their own books for the purpose of seeing

how their money was being conducted. There is no such law and never was in this country or in England. . . .”

In *Booth Newspapers, Inc v Muskegon Probate Judge*, 15 Mich App 203, 207; 166 NW2d 546, 548 (1968), the Court of Appeals summarized the *Nowack* case by quoting from an earlier Attorney General's opinion that the *Nowack* decision has:

“. . . placed Michigan at the vanguard of those states holding that a citizen's accessibility to public records must be given the broadest possible effect.” OAG, 1961-1962, No 3590, p 581, 587 (November 14, 1962).

1931 PA 328, § 491; MCLA 750.491; MSA 28.759, provides:

“All official books, papers or records created by or received in any office or agency of the State of Michigan or its political subdivisions, are declared to be public property, belonging to the people of the State of Michigan. . . .”

In your letter you indicate that your main area of concern regards the public inspection of the financial books and records of higher educational institutions organized under Article 8 of the Constitution of 1963.

Const 1963, art 8, § 4 provides:

“The legislature shall appropriate monies 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.”

The “annual accounting of all income and expenditures” given to the legislature is clearly a public record of the educational institution open to inspection by the public.

Although the boards of control of universities and colleges continue to have control and direction of all expenditures from the institution's funds by Const 1963, art 8, § 5 and Const 1963, art 8, § 6, said boards are a part of the government of the State of Michigan and are public bodies. *Robinson v Washtenaw Circuit Judge*, 228 Mich 225, 228; 199 NW 618, 619 (1924). *Regents of University of Michigan v Labor Mediation Board*, 18 Mich App 485, 490; 171 NW2d 477, 480 (1969). *Regents of University of Michigan v Michigan Employment Relations Commission*, 389 Mich 96; 204 NW2d 218 (1973).

The Constitution also sets forth what material shall be public records, open to inspection.

“All financial records, accountings, audit reports and other reports of public moneys shall be public records and open to inspection. A statement of all revenues and expenditures of public moneys shall be

published and distributed annually, as provided by law." Const 1963, art 9, § 23

Recently, in *Booth Newspapers, Inc v Muskegon Probate Judge, supra*, 15 Mich App, at 205; 166 NW2d, at 547, the Court summarized Michigan law on this subject as follows:

"The fundamental rule in Michigan on the matter before us, first enunciated in the case of *Burton v Tuite* (1889), 78 Mich 353, is that citizens have the general right of free access to, and public inspection of, public records. This is contrary to the English common-law rule which permitted inspection but prohibited private use, by providing no remedy in the absence of a showing of special interest specifically concerning litigation. . . ."

"The case of *Nowack v Auditor General* (1928), 243 Mich 200 (60 ALR 1351), remains the definite law of this state and has been employed by other jurisdictions. . . ."

While it is clear Michigan is indeed in the vanguard of states in providing citizen accessibility to public records, it must be recognized that the public's right to the examination of public records is not totally unqualified. In *Booth Newspapers, Inc v Muskegon Probate Judge, supra*, 15 Mich App, at 207, 208; 166 NW2d, at 548, the court set forth the following limitations:

1. ". . . [T]he legislature, for its own reasons, may specifically define and limit 'persons interested' to a certain class. . . ."
2. The legislature ". . . may also foresee certain governmental burdens and so restrict access by providing definitions of 'public' as opposed to 'private' records. . . ."
3. ". . . [T]he courts may determine that the legislature intended to restrict access in cases where
 - (a) "harm to the public interest may be said to outweigh the right of members of the public to have access, or
 - (b) "where the purpose for which the information will be used is stated to be unlawful, or
 - (c) "where reputations may be harmed. . . ."

"In such cases," the Court of Appeals noted, "a balancing of the public interest with the right of access must be made."

As indicated above, Const 1963, art 9, § 23 provides that all financial records of public monies shall be public records and open to inspection. In *Grayson v Board of Accountancy*, 27 Mich App 26, 34-35; 183 NW2d 424, 428 (1970), the Court of Appeals construed the words "financial records" in the following manner:

"The manifest purpose of article 9, section 23 is to allow the public to keep their finger on the pulse of government spending. *The most expeditious way of so doing is to give the public access to summaries, balance sheets, and other such compilations which map out and correlate a myriad of financial transactions into a meaningful account.* It strains one's credulity to think that the framers of the constitution

meant to allow the public to inspect every receipt, every application for licensure, and every writing evidencing a receipt or expenditure. It is totally unnecessary to give such authority to the public to achieve the purpose aforementioned and such authority could easily serve as a tool to harass governmental agencies by unreasonable demands for great volumes of individual documents. *We hold that the public right to information given by article 9, section 23 is best promoted, and the smooth functioning of the government thus protected, by construing the words 'financial records' to require more than a receipt or document. . . .*" (emphasis added)

I have previously ruled, in OAG, 1973-1974, No 4794, p 70, 73 (August 7, 1973), that:

"Records of the names and compensation of the officers and employees of the State of Michigan and its political subdivisions, including the colleges and universities continued by Const 1963, art 8, § 5, and the colleges and universities granting baccalaureate degrees, created by law, and whose governing bodies are constitutional bodies corporate under Const 1963, art 8, § 6, are subject to examination, inspection and copying by any member of the public for any lawful purpose."

Thus, based on the foregoing, it is apparent that the financial books and records of higher educational institutions organized under the Constitution are public records and are open to public inspection.

In view of the foregoing, it is my opinion that the financial books and records of state higher educational institutions organized under Article 8 of the Constitution of 1963 are public records subject to inspection by the public within the guidelines set forth in *Grayson v Board of Accountancy, supra*, and *Booth Newspapers, Inc v Muskegon Probate Judge, supra*. However, it should be noted that the governing body, may make such rules and restrictions as are reasonable and proper under the circumstances with regard to examination, inspection and copying of the records in order to protect the records from loss or destruction and in order to permit the effective functioning of the public office. *Burton v Tuite, supra*, 78 Mich, at 375; 44 NW, at 285.

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