into with a married woman in her own name. It is, therefore, my opinion that the creditworthiness of a married woman is not affected by state property laws and that a married woman is responsible for her own obligations regardless of whether they are incurred by purchase of a luxury or a necessity.

FRANK J. KELLEY,
Attorney General.

76 11 09.1

CREDIT UNIONS: Investment of deferred compensation funds.

CONSTITUTION OF MICHIGAN: Art 9, § 19.

Deferred compensation funds of employees accumulated by a school district may not be invested in a credit union.

Opinion No. 4995 November 9, 1976.

Honorable John Otterbacher
State Senator
The Capitol
Lansing, Michigan

You have requested my opinion as to whether a school district may deposit funds accumulated under an approved deferred compensation program in a federally insured state chartered credit union. The accumulated funds are to be deposited by the district in a special account of the credit union.

The Michigan Credit Union Act, 1925 PA 285, § 4(a), MCLA 490.4(a); MSA 23.484(a), specifically authorizes credit unions to establish different classes of deposits providing the written approval of the Commissioner of the Financial Institutions Bureau is received. 1925 PA 285, § 4(a), *supra,* also provides that a credit union may "receive the funds of its members either as payments on shares or as deposits . . ." 1925 PA 285, *supra,* § 5.

A credit union is, by definition, an incorporated cooperative society in which the members are the owners and to be a member of a credit union, an individual must subscribe to at least one share of stock in the credit union. Each member is entitled to cast one vote in such matters as the selection of directors, dissolution, and conversion of the credit union to a federal charter. Thus, although the deferred compensation deposits would be in a special non-voting account, the fact that the school district must become a member of the credit union to be eligible to open a special account means that the school district is entitled to vote as a member.

Const 1963, art 9, § 19 provides:

> "The state shall not subscribe to, nor be interested in the stock of any company, association or corporation, except that funds accumulated to provide retirement or pension benefits for public officials and employees may be invested as provided by law; and endowment funds

created for charitable or educational purposes may be invested as provided by law governing the investment of funds held in trust by trustees."

In reviewing this provision at the Constitutional Convention of 1961, the delegates readopted the prohibition of Const 1908, art 10, § 13 which prohibits the state from subscribing to the stock of any company, association or corporation but created an exception for public employee pension and retirement funds. In explaining the provision to the citizens, the delegates to the Constitutional Convention offered the following comment:

"This is a revision of section 13, article X of the present constitution which has the desirable object of preventing state ownership of private business. Language has been added to permit, under appropriate restrictions, investment of public employee retirement funds and university endowment funds in such things as share accounts in savings and loan associations and high grade corporate securities."
2 Official Record, Constitutional Convention of 1961, p 3402

In determining the meaning of constitutional language, the courts have sanctioned resort to the debates of the framers. *Burdick* v *Secretary of State,* 373 Mich 578; 130 NW2d 380 (1964). An examination of the debates of the Constitutional Convention of 1961 reveals the reasoning for the pension and retirement fund exceptions. In supporting the proposal, Mr. Brake, Chairman of the Committee on Finance and Taxation, offered the following comment:

"The committee believes that if these funds are to earn the best return and are to be protected against inflation, the legislature should have the power to permit, under appropriate restrictions as to quality and amount, investment of these funds * * * in such things as share accounts in savings and loan associations, and high grade corporate securities."
1 Official Record, Constitutional Convention of 1961, p 767

Another delegate, Mr. Van Dusen, reiterated this rationale by stating:

"It was believed by the committee that it would be desirable to permit, under restrictions imposed by the legislature, the investment of these long term funds in securities, including the equity securities of corporations, if the legislature felt that was desirable. This is protection against inflation. It provides for a balanced portfolio."
Official Record, Constitutional Convention of 1961, Volume 1, p 767

Thus, it appears that the framers of the Constitution, in referring to pension and retirement monies, intended to exclude funds which belong to the State but which are set aside as deferred compensation benefits and which are subject to long term investments.

Although the deferred compensation program which you have referred to was not common at the time of the 1961 Convention, it is important in construing the Constitution to ascertain and give effect to the intent of the people ratifying the Constitution. *City of Jackson* v *Commissioner of Revenue,* 316 Mich 694; 26 NW2d 569 (1947); *Traverse City School District* v *Attorney General,* 384 Mich 390; 185 NW2d 9 (1971). Thus, in weighing

the traditional prohibition against the state having an interest in a corporation or association with the desire to protect the integrity of long term investments, the people in enacting Const 1963, art 9, § 19 decided in favor of the latter. Since the deferred compensation funds which you describe are similarly invested over extended periods of time and are segregated from the current operating fund of the school district, it follows that such funds are of the type excluded from the provisions of Const 1963, art 9, § 19.

In deciding whether the Michigan Civil Service Commission possessed the authority to institute a similar program, I recognized the similarity of a deferred compensation program and a retirement plan as follows:

> ". . . The deferred compensation contributed by employees to the proposed plan partakes both of the character of 'state funds' and of 'retirement benefits.' This conclusion rests upon the provisions of the Plan which identify the state as owner of all investments made in order to carry out its purpose and which make these investments a general asset of the state available for general corporate purposes. *Further, as noted in the enabling resolution (Exhibit B), the deferred compensation is to provide additional 'retirement security' and may be characterized as a future retirement benefit.* (emphasis added) Letter to Mr. C. J. Hess, Acting State Personnel Director, August 7, 1974

At 60 Am Jur 2d, Pensions and Retirement Funds, § 2, p 879, pension is defined in the following terms:

> ". . . A pension paid a governmental employee for long and efficient service is not an emolument the payment of which is barred by a state constitutional provision, *but is a deferred portion of the compensation earned for services rendered.*" (emphasis added)

Similarly, courts in various jurisdictions have defined a pension plan in terms of a deferred compensation program. See: *Sonnabend* v *City of Spokane,* 333 P2d 918 (Sup Ct Washington 1958); *Murrell et al* v *Elder-Beerman Stores Corp,* 239 NE2d 248, 16 Ohio Misc 1 (1968); *Morrissey* v *Curran,* 302 F Supp 32 (SDNY 1969). It is therefore my opinion that, in excepting "retirement or pension benefits" from the stock interest prohibition of Const 1963, art 9, § 19, the framers of the Constitution excluded deferred compensation funds.

However, under Const 1963, art 9, § 19, such funds may only be invested as "provided by law." The Michigan Supreme Court has interpreted this term to mean as provided by statute. See *In Re Campbell,* 138 Mich 597; 101 NW 826 (1904). Such funds, therefore, may only be invested in a manner expressly permitted by the legislature. With respect to a retirement plan with assets in excess of $250,000.00, the legislature has provided that the funds may be invested "subject to the terms, conditions, and limitations imposed by law of the state upon domestic life insurance companies." See 1965 PA 314, § 1; MCLA 38.1121; MSA 3.981(101). An examination of the Insurance Code does not indicate that a life insurance company may lawfully invest in the shares of a credit union.

With respect to investment of deferred compensation funds, regardless

of the amount of the assets, the treasurer of the school district must follow those provisions of the school code, 1955 PA 269; MCLA 340.1 *et seq;* MSA 15.3001 *et seq,* which control the deposit and investment of school district funds. My examination of the pertinent provisions of the school code indicates that a school district has no authority to deposit or invest funds in a credit union. See 1955 PA 269, §§ 568, 610, 611; MCLA 340.568, 340.610, 340.611; MSA 15.3568, 15.3610, 15.3611.

It is therefore my opinion that, in the absence of express enabling legislation, a school district may not invest deferred compensation funds in a credit union.

FRANK J. KELLEY,
Attorney General.

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SCHOOL BONDS: Consolidation of school districts.

SCHOOLS AND SCHOOL DISTRICTS: Effect of consolidation on pre-existing bonded indebtedness.

Upon consolidation of school districts, the consolidated school district may assume any pre-existing bonded debt of the original districts which is not subject to constitutional limitations on taxes. The assumption of the indebtedness, however, may occur only with approval of the school district electors either at the time of the consolidation or at any time after 3 years following the consolidation.

A bonding issue within a school district must apply equally to the entire district.

Opinion No. 5136 November 9, 1976.

Honorable Ralph Ostling, State Representative
Honorable Dan Stevens, State Representative
Honorable Robert Davis, State Senator
Capitol Building
Lansing, Michigan

You have asked the following questions concerning the Twin Valley School District:

1. Does the fact that the bonded indebtedness of the Boyne City School District was never assumed by the East Jordan School District have any bearing on the legality of the merger of these districts into the Twin Valley District?
2. Can East Jordan and Boyne City create new and seperate bonding issues for their respective high schools while being a part of the Twin Valley School District?
3. If the answer to No. 2 is negative, could a law be amended or