

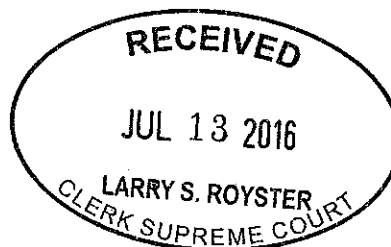


STATE OF MICHIGAN
EXECUTIVE OFFICE
LANSING

RICK SNYDER
GOVERNOR

BRIAN CALLEY
LT. GOVERNOR

July 13, 2016



Honorable Robert P. Young, Jr.
Chief Justice
Michigan Supreme Court
Michigan Hall of Justice
925 W. Ottawa St.
Lansing, Michigan 48913

Dear Chief Justice Young:

Under Article 3, Section 8 of the Michigan Constitution of 1963, the Governor may, on solemn occasions, request that the Michigan Supreme Court issue an opinion on an important question of law. Such a request must concern the constitutionality of legislation and must be made after the legislation has been enacted into law but before the effective date. The Michigan Supreme Court's prompt resolution of important constitutional questions through advisory opinions greatly assists the people of Michigan by avoiding the proliferation of state and federal lawsuits on the same question and by providing the necessary constitutional certainty before moving forward with the implementation of the law.

On June 27, 2016, I signed into law Senate Bill 801 (education budget) which became Public Act 249 of 2016. This request for an advisory opinion involves the constitutionality of Section 152b of the Act, which becomes effective on October 1, 2016. A copy of the Act is attached as Exhibit A. The relevant part of this legislation would appropriate an amount of general funds for the 2017 fiscal year, not to exceed \$2,500,000.00, to reimburse certain mandatory costs incurred by nonpublic schools. Attached as Exhibit B is the November 25, 2014 nonpublic school mandate report referenced in Section 152b.

Constitutional questions have been raised about Section 152b of the Act. I have received a written request to line-item veto Section 152b signed by representatives of the Michigan Association of School Administrators, the Michigan Association of School Boards, the Michigan Parent Teacher Organization, the Tri-County Alliance, the Michigan Elementary & Middle School Principals Association, the Michigan Association of Secondary School Principals, and the Michigan Cited Education Association. This request asserted that the appropriation authorized by Section 152b would violate Article VIII, § 2 of the Michigan Constitution of 1963. I have also received a letter encouraging me to sign the education budget into law with Section 152b signed by representatives of the Michigan Catholic Conference, the Michigan Association of Non-Public Schools, Agudath Israel of America, Christian Schools International, the Michigan District Office of the Lutheran Church-Missouri Synod, the Michigan Association of Public School Academies, and the Great Lakes Education Product. This letter asserts that Section 152b would not violate Article VIII, § 2 of the Michigan Constitution of 1963. Both groups have presented thoughtful arguments about the constitutional merits of the legislation in question.

Additionally, the Chief Legal Counsel to the Attorney General has written an opinion letter to Michigan Senator Howard Walker in which he concluded that the Attorney General was

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"unable to definitively answer" whether Const 1963, art VIII, § 2 prohibits the legislature from reimbursing nonpublic schools for certain, similar administrative costs. A copy of this letter is attached as Exhibit C.

It has been reported that the American Civil Liberties Union is considering a legal challenge to Section 152b. Protracted litigation over the constitutionality of the provision in question likely would not result in a final determination before October 1, 2016, when the law is scheduled to become effective.

The Michigan Supreme Court addressed the scope and reach of Article VIII, § 2 of the Michigan Constitution of 1963 in the case of *Traverse City School District v Attorney General*, 384 Mich 390 (1971) in the context of approving the constitutionality of shared time services and auxiliary services. While that decision provides helpful guidance, the Court was not called upon to apply Article VIII, § 2 of the Michigan Constitution of 1963 to the unique factual context presented by Section 152b of 2016 PA 249.

Given the concerns that have been expressed over the constitutionality of Section 152b, and the benefit of having a final answer on this question before the law becomes effective, I find this to be a solemn occasion and respectfully request that the Court issue an advisory opinion on the following question of statewide importance:

Whether the appropriation to nonpublic schools authorized by Section 152b of 2016 PA 249 would violate Article VIII, § 2 of the Michigan Constitution of 1963, which prohibits certain types of aid to nonpublic schools.

Prompt review of this question would be greatly appreciated as it will provide needed direction to me, the Legislature, and Michigan residents. I therefore respectfully ask that the Court grant this request in time to enable briefing and issuance of an opinion before October 1, 2016.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Snyder", written in a cursive style.

Rick Snyder
Governor