of the Maccabees v *Commissioner of Insurance*, 235 Mich 459; 209 NW 581 (1926)."

Moreover, where the Legislature uses the term "may" in one part of the statute and the term "shall" in another part, the use of the different language is intended to mark a distinction between what is permissive and what is mandatory. *Moore* v *Vrooman*, 32 Mich 526 (1875).

The Court of Appeals in *Hunt* v *City of Ann Arbor*, 77 Mich App 304, 308; 258 NW2d 81 (1977), *lv den* 402 Mich 824 (1978), discussed the purpose of MCL 117.5c; MSA 5.2084(3), in a manner consistent with this interpretation of the word "shall."

> "[I]t would appear to have as its purpose an attempt to obviate the need for a charter amendment to change salaries of elected officials. It also has intage of providing for *uniform and periodic reassessment* of the compensation of all elected officials." [Emphasis added.]

The uniform and periodic reassessment of the compensation of elected officials by a local compensation commission obviates an interpretation of the word "shall" in MCL 117.5c(c); MSA 5.2084(3)(c), as merely directory or permissive.

It is my opinion in answer to your first question that a local compensation commission created pursuant to MCL 117.5c(c); MSA 5.2084(3)(c), to reassess uniformly and periodically the compensation of all elected local officials, must hold its meetings in odd numbered, rather than even numbered, years.

Your second question may be stated as follows:

> If a local compensation commission neglects to meet in an odd numbered year, may it meet in the ensuing even numbered year?

As indicated above, MCL 117.5c; MSA 5.2084(3), expressly refers to the "odd numbered year." Formerly, prior to amendment by 1977 PA 204, this section provided:

> "The commission shall meet for not more than 15 session days in 1972 and every odd numbered year thereafter."

This section was added to 1909 PA 279 by 1972 PA 8, and although the change was implemented in 1972, the Legislature clearly expressed its intention that subsequent meetings of such commissions shall be in the odd numbered year, excluding any suggestion that meetings be held in even numbered years. The Legislature's deliberate choice of the odd numbered year and the omission of the even numbered year excludes the latter from the legislative intention. *Expressio unius est exclusio alterius*: express mention in a statute of one thing implies the exclusion of other similar things. *Sebewaing Industries, Inc* v *Village of Sebewaing*, 337 Mich 530, 545; 60 NW2d 444 (1953).

It is my opinion in answer to your second question that a local compensation commission which neglects to meet in the odd numbered year cannot hold a belated meeting in the even numbered year pursuant to MCL 117.5c; MSA 5.2084(3).

FRANK J. KELLEY,
Attorney General.

INSURANCE: No-fault insurance act—mileage allowance for travel for medical services

The Internal Revenue Service income tax deduction allowance of 9 cents per mile is not a reasonable rate for recovery of travel expense charges incurred for the purpose of receiving medical care services under the no-fault insurance act.

Opinion No. 6300 June 13, 1985.

Honorable Perry Bullard
State Representative
The Capitol
Lansing, Michigan

You have requested my opinion on the question "whether the Internal Revenue Service allowance of 9 cents per mile is a reasonable guide for reasonable charges incurred for an injured person's care, recovery, or rehabilitation in light of OAG, 1981-1982, No 5990, p 400?" Your question concerns the amount of recovery of personal protection insurance benefits for transportation expenses incurred in order to receive medical care.

The no-fault insurance act, MCL 500.3107; MSA 24.13107, in pertinent part, provides:

> "Personal protection insurance benefits are payable for the following:
>
> "(a) Allowable expenses consisting of all *reasonable charges incurred for reasonably necessary* products, *services* and accommodations for an injured person's care, recovery or rehabilitation." (Emphasis added.)

Since the term "reasonable charges" was not defined by the Legislature, it is necessary to ascertain and give effect to the intent of the Legislature in accordance with the stated remedial purposes of the Act. *Gauthier* v *Campbell, Wyant & Cannon Foundry Co*, 360 Mich 510; 104 NW2d 182 (1960).

In *Swantek* v *Automobile Club of Michigan Ins Group*, 118 Mich App 807, 808; 325 NW2d 588 (1982), *lv den*, 417 Mich 995 (1983), the court addressed the issue of whether travel expenses incurred in order to obtain medical treatment are recoverable under MCL 500.3107; MSA 24.13107. Construing the no-fault insurance act, the court in *Swantek* ruled that where the Legislature has intended to abolish all liability for a specific loss, it has clearly done so, as in subthreshold noneconomic loss. MCL 500.3135; MSA 24.13135. The court concluded that because reasonable and necessary travel expenses incurred for the purpose of obtaining medical services are not clearly excluded by the language of the statute, it must follow that they are reasonable charges under the statute.

Most importantly, for purposes of construing the Michigan no-fault insurance act, an analogy between the *no-fault insurance act* and the *Worker's Disability Compensation Act of 1969*, was approved as valid and persuasive by the court in *Swantek*, at 810. The analogy is founded upon a close similarity in the purpose of each act as being remedial in nature, and recognizes a comparability in the language used in MCL 500.3107; MSA 24.13107, of the no-fault insurance act, to MCL 418.315; MSA 17.237(315), of the Worker's Disability Compensation Act of 1969, which the court found expressed the same legislative intent. Extrapolation from such an analogy permitted the court to use

worker's compensation precedent to construe similar provisions of the no-fault insurance act. Finally, it is noted that the court in *Swantek* expressed no opinion on the reasonableness of the amount of transportation expenses claimed.

OAG, 1981-1982, No 5990, p 399 (October 2, 1981), addressed the issue of the appropriate mileage allowance permitted as a reasonable travel expense incurred in order to secure medical services recoverable under MCL 500.3107; MSA 24.13107, and concluded that in the absence of a statute, court decision, or rule setting forth the allowable travel expenses under the no-fault insurance act, the state travel reimbursement rates furnish reasonable guidance. Relying on *Hite* v *Evart Products Co*, 34 Mich App 247; 191 NW2d 136, *lv den*, 386 Mich 753 (1971), which held that the state's Standard Travel Regulations represented a reasonable guide for the reimbursement of travel expenses incurred in order to obtain medical treatment under the prevailing worker's compensation act, and *Visconti* v *Detroit Automobile Inter-Insurance Exchange*, 90 Mich App 477, 479; 282 NW2d 360 (1979), which found the pertinent provisions of the Worker's Disability Compensation Act of 1969 and the no-fault insurance act to be similar, the opinion utilized the worker's compensation act analogy and applied 1980 AACS, R 408.45(2), to the no-fault insurance act as a reasonable guide for reimbursement of travel expenses incurred in securing medical services.

The current State Standardized Travel Regulations fix the mileage rate at 30.25 cents per mile for travel.

Internal Revenue Code, § 213(d)(1)(B); 96 Stat 421 (1982); 26 USC 213, defines the term "medical care" to include amounts paid for transportation primarily for, and essential to, medical care. The standard mileage rate for computing the cost of operating an automobile for transportation to receive medical care is 9 cents per mile. Rev Proc 82-61 1982-2 CB 849, 851. Rev Proc 82-61, in pertinent part, states:

> "Because certain items, such as the proportionate share of general maintenance or general repairs, liability insurance, or depreciation in connection with the use of an automobile, may not be taken into account in computing the amount paid for transportation . . . with respect to medical care . . . , an individual may not use the same standard mileage rate as is permitted in section 3.01 [Business Expense Standard Mileage Rate] of this rev procedure."

It is noted that in *Weary* v *US*, 510 F2d 435 (CA 10, 1975), *cert den*, 423 US 838; 96 S Ct 67; 46 L Ed 2d 58 (1975), the Court declined to permit the deduction of travel expenses for medical care at a rate to include depreciation costs for the automobile, permitting deduction only based upon the rate per mile approved by the controlling revenue procedure. In his dissent, Judge Christensen observed that the government conceded that if the car had been rented, the amount paid for the rental to receive medical care would be deductible, terming the position of the government to be "excessively grudging against the taxpayer."

The medical travel expense deduction permitted under Rev Proc 82-61 is an unreasonable standard for reimbursement under MCL 500.3107; MSA 24.13107. Unlike 26 USC 263, which provides for an income tax deduction, a matter of legislative grace, and therefore to be construed very narrowly, the Michigan no-fault act's remedial nature requires a broad construction to effectuate coverage. *BASF Wyandotte Corp* v *Transport Ins Co*, 523 F Supp 515 (ED Mich, 1981); *Bauman* v *Auto Owners Ins Co*, 133 Mich App 101; 348 NW2d 49 (1984).

Swantek holds that travel expenses incurred in order to obtain medical treatment are recoverable thereunder. OAG, 1981-1982, No 5990, *supra*, concluded that the state travel reimbursement rates furnish reasonable guidance for the application of MCL 500.3107; MSA 24.13107. Thus, 30.25 cents per mile for travel incurred for the purpose of receiving medical services is reasonable. It must follow that 9 cents per mile is not a reasonable rate of recovery for travel expenses incurred for the purpose of securing medical services as provided in MCL 500.3107; MSA 24.13107.

It is my opinion, therefore, that the sum of 9 cents per mile is not a reasonable rate per mile for recovery of travel expense charges incurred for the purpose of receiving medical care services under the no-fault insurance act.

FRANK J. KELLEY,
Attorney General.

CONSTITUTIONAL LAW: Const 1963, art 9, § 24—reasonableness of imposition of new faithful performance condition upon members of state-administered retirement systems

RETIREMENT AND PENSIONS: Imposition of new faithful performance condition upon members of state-administered retirement systems

If enacted into law, a faithful performance condition applicable to all members of a state-administered retirement system requiring that, in order to receive a retirement allowance the member shall not be convicted of a misdemeanor or felony involving a breach of the public trust committed in the performance of public duties, would be reasonable and not subversive of the protections of Const 1963, art 9, § 24.

Opinion No. 6301 June 14, 1985.

Honorable Francis R. Spaniola
State Representative
The Capitol
Lansing, Michigan

You have requested my opinion on the following question:

> If a member of a state-administered retirement system who meets the age and service requirements were to be convicted of a misdemeanor or a felony committed in the conduct of a public position covered by a retirement system which contains a condition of faithful performance and the member were to resign or be dismissed from service because of the conviction, would the member be entitled to receive a retirement allowance?