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MICHIGAN HOUSE OF REPRESENTATIVES  
**REPRESENTATIVE STEVEN JOHNSON**  
72ND DISTRICT

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HIGHER EDUCATION AND  
COMMUNITY COLLEGES, VICE-CHAIR

Wednesday, August 17, 2022

Attorney General Nessel:

I am writing to request a formal Attorney General opinion regarding the constitutionality of MCL 389.121(d).

Allowing community colleges to provide baccalaureate degrees is a topic of controversy within the Legislature—with powerful points for and against. But there appears to be a strong argument that this policy—and, by extension, MCL 389.121(d)—is unconstitutional. Obviously, until the primary, antecedent question of constitutionality is settled, there's no point in debating the policy. It wastes taxpayer resources, and is bad governance to boot, when we consider unconstitutional fixes to pressing public policy problems.

Start with three constitutional provisions that establish how our institutions of higher education are governed. Const 1963, art 8, § 5, explains that the governing bodies for the University of Michigan, Michigan State University, and Wayne State University are elected, with the Governor filling vacancies. The next section, Const 1963, art 8, § 6 (emphasis added), says:

Other institutions of higher education established by law *having authority to grant baccalaureate degrees* shall be governed by a board of control which shall be a body corporate. . . . Each board of control shall consist of eight members who shall hold office for terms of eight years, not more than two of which shall expire in the same year, and who shall be appointed by the governor by and with the advice and consent of the senate.

And the final provision, Const 1963, art 8, § 7, explains that all “public community and junior colleges” are “supervised and controlled by locally elected boards.” Taken together, these provisions appear to say that, except for UM, MSU, and WSU, the governing body of any baccalaureate-granting institution of higher education is installed by the Governor and Senate, while community colleges’ governing bodies

are locally elected. Note that, although it isn't the primary point of these provisions, they explicitly separate baccalaureate-granting institutions and community colleges into two *entirely different* categories of institutions of higher education.

Now take MCL 389.121(d), which allows a board of trustees of a community college to "[e]stablish education programs and grant a baccalaureate degree in cement technology, maritime technology, energy production technology, or culinary arts." This subsection appears to give a locally elected community college boards of trustees baccalaureate-granting power—a power that Const 1963, art 8, §§ 5–7, explicitly reserves to Governor- and Senate-installed boards governing non-community college institutions of higher education. I am not an attorney, but I struggle to see how MCL 389.121(d) can be reconciled with the above constitutional provisions.

I respectfully ask that you provide your opinion on the matter without delay so that the Legislature can continue its education-policy discussions.

Thank you for your time, and I am happy to answer any questions or clarify as necessary.

Sincerely,



Representative Steve Johnson  
District 72