# The South Africa Divestment Law Is Constitutional And Does Not Infringe On The University's Autonomy.

We have been told over and over again that because the University of Michigan is an independent institution, the South Africa divestment law is an unconstitutional invasion of the university's independence.

Article 8, Section 5 of the state constitution does indeed say:

> The regents of the University of Michigan and their successors in office shall constitute a body corporate known as the Regents of the University of Michigan....Each board shall have general supervision of its institution and the control and direction of all expenditures from the institution's funds.

But that is not the whole story. Another article of the state constitution, and a recent Attorney General's opinion, say that the state legislature can control how a university invests its funds without running afoul of the university's constitutional autonomy.

Article 9, Section 19 states:

> 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....

On October 29, 1980, Attorney General Frank Kelley issued an opinion (No. 5807) stating that an earlier law passed by the legislature concerning investments was binding on universities granting baccalaureate degrees without violating the autonomy provision. He said:

> The governing boards of institutions of higher education having the authority to grant baccalaureate degrees, under Const 1963, art 8, secs 5 and 6, are subject to legislative exercise of the police power ....The police power includes protecting the public from financial loss ....Thus, 1976 PA 157 (the earlier law governing investments) may be applied to the governing boards of institutions of higher education granting baccalaureate degrees without violating Const 1963, art 8, secs 5 and 6.

If one law governing investments by universities can be enforced without violating their autonomy, then the South Africa divestment law can be as well.

Do not be fooled by the Regents' arguments. The state legislature has the power to control investments and to combat racism. It has exercised that power to order divestment by universities of investments in companies doing business with the racist South African regime.

That law can and will be enforced.

--The Washtenaw County Committee Against Apartheid
February 14, 1983