tients being cared for in a county medical care facility being operated by a County Board of Institutions.

FRANK J. KELLEY,
Attorney General.

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CITIES-COUNTIES: Joint city-county building authority.

Members of county board of supervisors, city council, may not serve as members of commission of joint city-county building authority.

No. 4308 July 17, 1964.

Mr. Russell W. Bradley
Menominee County Prosecuting Attorney
Menominee, Michigan

You have requested my opinion on two questions arising under the provisions of Act 31, P.A. 1948, (Ex. Sess.), as amended, permitting the establishment of a joint city-county building authority as therein provided.[1]

The questions are as follows:

> "1. May members of the County Board and City Council of a fourth class city be elected to the commission to govern a joint city-county authority, incorporated for the purpose of acquiring, furnishing, equipping, owning, improving, enlarging, operating and maintaining a building for the joint use of said City and County?
>
> "2. Does the provisional with which Section M.S.A. 5.301(5) exclude members of the legislative body only in the case of a building authority within a single subdivision of government?"

Section 5 of the statute referred to contains the following language pertinent to your questions:

> "The articles of incorporation shall set forth the name of such authority; the name or names of the unit or units incorporating the same; the purpose for which the authority is created; the number, terms and manner of selection of its officers including its governing body which shall be known as the 'commission'; the powers and duties of the authority and of its officers; the date upon which the authority shall become effective; the name of the newspaper in which the articles of incorporation shall be published; and any other matters expedient to be incorporated therein: *Provided, however, That the members of the legislative body of each incorporating unit of a single authority as provided for in section 1 hereof shall not be eligible for membership or appointment to such authority.*"[2]

[1] C.L. '48 and C.L.S. '61 §§ 123.951 *et seq.*; M.S.A. 1961 Rev. Vol. and 1963 Cum. Supp. §§ 5.301(1), *et seq.*

[2] C.L.S. '61 § 123.955; M.S.A. 1961 Rev. Vol. § 5.301(5). Emphasis supplied. The proviso was added by Act 143, P.A. 1955.

Section 1 provides as follows:

> "Any county, city, village or township may incorporate, as provided in this act, an authority for the purpose of acquiring, furnishing, equipping, owning, improving, enlarging, operating and/or maintaining a building or buildings and the necessary site or sites therefor, for the use of the county, city, village or township."[3]

Section 2 provides as follows:

> "Any county and any city or village which is the county seat thereof, may incorporate an authority for the purpose of acquiring, furnishing, equipping, owning, improving, enlarging, operating and/or maintaining a building or buildings and the necessary site or sites therefor, for the use of such county and city or village."[4]

Section 5a provides that a joint building authority of a county and a city or village shall be directed and governed

> ". . . by a board of commissioners of 3 members, 1 to be elected by the board of supervisors of the county, 1 to be elected by the legislative body of the city, and 1 to be elected by the joint action of the board of supervisors of the county and the legislative body of the city, and if the said legislative bodies are unable to agree upon a choice for the third member within 60 days of the election of the first member, then the said third member shall be appointed by the governor. Said commissioners shall serve for 6-year terms. Said board of commissioners shall designate 1 of their number as chairman and 1 as secretary, and shall adopt by-laws and rules of procedure and provide therein for regular meetings."[5]

You will recall that in *Rude v. Muskegon County Building Authority*,[6] the Supreme Court of Michigan held that the county building authority created under the cited statute, though a creature of the county in the sense that it exists to carry out a public purpose of the county, is not the alter ego of the county, since it is limited in its scope of activity within the county, and the legislative intent is to have the authority separate from the board of supervisors in identity.

As the language in the *Rude* case will indicate, the separateness of the authority from the governmental entity, here the county, is basic to the integrity of the authority concept, for only by such separateness can the county be effectively insulated from obligation on the authority's commitment to the revenue bondholders, and only thus can the financial commitment be restricted to the income-producing potential of the project—in this case, the value of the annual use of the building during the life of the bonds, paid to the authority as rent by the county.

So also in *Walinske v. Detroit-Wayne Joint Building Authority*,[7] the court emphasizes the necessity of insulating the fund provided for con-

[3] C.L.S. '61 § 123.951; M.S.A. 1961 Rev. Vol. § 5.301(1).
[4] C.L. '48 § 123.952; M.S.A. 1961 Rev. Vol. § 5.301(2).
[5] C.L. '48 § 123.955a; M.S.A. 1961 Rev. Vol. § 5.301(5a).
[6] 338 Mich. 363, 366.
[7] 325 Mich. 562.

struction and financing of the building from the general fund of the municipalities, and the separation of the identity of the city and the county from the identity of the building authority.

In view of the need for separating the governing and financial aspects of the underlying municipalities from that of the building authority in order to preserve the legality of the non-debt character of the authority financing, the provisions of Section 5 must be construed in light of this basic requirement.

You point out that the language of Section 5 appears to require that the commission not include any members of the legislative body of each incorporating unit of a single authority, but state that on a more close reading you note that the language of the provisional refers to a single authority as provided for in Section 1. Authority for a joint city-county building authority is provided in Section 2 rather than Section 1. Therefore, your question is whether the joint authority is free from the prohibition against members of the legislative body of incorporating units from serving on the commission authorized by Section 2.

We find no language in Section 2 or elsewhere in the statute which would permit members of the legislative body of the incorporating units of the city and county establishing a city-county building authority to be eligible for membership or appointment to such authority. The absence of such specific language, coupled with the specific recognition in the proviso of Section 5 of the unsuitability of dual membership on governing bodies and authority commission, must result in the conclusion that such membership is not permitted by the statute.

In view of the purport of the *Rude* and *Walinske* cases, such dual membership would threaten, if not destroy the separateness of governmental and financial identity required for proper establishment and administration of building authority construction and financing.

In *Myers v. Post,* 256 Mich. 156, holding that where the Kent County Board of Supervisors refused to renew lease of county property with adequate consideration in order to lease it to city for inadequate consideration, it was held that constructive fraud on rights of taxpayers ensued. There, all city members of the board of supervisors voted for the lease and, being more numerous than township representatives, prevailed as a majority. The court likened their action to that of directors of a corporation who vote for their personal interest rather than that of the corporation. In like fashion, the supervisor or councilman who serves on a joint city-county building authority is in such a position as to cast doubt upon his objectivity, no matter how able and objective he may in fact be.

In a recent opinion, No. 4307, dated June 30, 1964, the common law rule regarding duality of officeholding was discussed, and it was pointed out that although such duality is not unlawful *per se,* it comes under scrutiny if the nature of the two offices is such as to make them incompatible in that the undertaking by the same person to faithfully perform the duties of each may be contradictory. It was pointed out in that opinion that this rule recognizes the proverb that a man cannot serve two masters. Various opinions of Attorneys General applying this rule were collated in

Opinion No. 4307. The same are relevant here, since the representatives of a participating township or county, in serving as commissioner in a joint city-county building authority, is clearly conflicted in weighing the interests of his own municipality as related to those of the joint entity and the other participating governmental unit in the building authority.

The language of Section 5, as quoted hereinabove, refers to members of the legislative body of *each* incorporating unit of a single authority, and makes such members not eligible for membership on the authority commission. The use of the word *each* must refer to all units enumerated in Section 1, which includes both township and city. The use of the word "each" would not have been necessary or appropriate unless the legislature had intended, by its use, to recognize the undesirability of dual officeholding in the case of joint building authorities under Section 2 as well as single authorities under Section 1.

> ". . . Provisos following an enacting clause are to be given a rational construction in harmony with the ascertainable general purpose and intent of the enactment, considered in its entirety, aided when possible by any other legislation found *in pari materia* . . ."[8]

Therefore, it is my opinion that the language of the proviso in Section 5, though it refers specifically only to the single-unit building authority authorized by Section 1, must be construed as legislative recognition of the undesirability of dual officeholding, and therefore as applicable to the multiple-unit building authority authorized by Section 2. Accordingly, it is my ruling that no member of the governing body of a fourth class city or of a county may be appointed to the governing commission of a joint city-county building authority.

FRANK J. KELLEY,
Attorney General.

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[8] *Kelley v. Judge of Recorder's Court,* 239 Mich. 204, 212.