

officers and institutions covered therein, and Section 5 of Act 317, P.A. 1966. A contract cannot be "null and void" and be "not void but voidable by the state or political subdivision" at the very same instant. Applying the proper rule to statutory construction reserved to such circumstances, *City of Detroit v. Michigan Bell Telephone Company*, 374 Mich. 543 (1965), it is my opinion that Act 317, being a later expression of the legislature is controlling despite the absence of a repealing clause. The contract would thus be voidable.<sup>1</sup>

FRANK J. KELLEY,  
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670928.1

**BLUE CROSS AND BLUE SHIELD:** Authority to acquire home office building.

Blue Cross and Blue Shield may acquire a home office building under the nonprofit provisions of the Michigan General Corporation Act.

**INSURANCE:** Commissioner's power to regulate.

Regulation of the acquisition of a home office by Blue Cross and Blue Shield is not specifically set forth in Acts 108 and 109, P.A. 1939, and therefore the Commissioner of Insurance has no power to regulate such acquisition.

No. 4589

September 28, 1967.

Mr. David J. Dykhouse  
Commissioner of Insurance  
Lansing, Michigan

You have informed me that the Michigan Hospital Service and Michigan Medical Service, which are respectively known as Blue Cross and Blue Shield, propose to erect a home office building to replace an existing jointly owned home office and rented facilities. This proposal has raised fundamental questions of law as to which you request my opinion. These questions can be restated as follows:

1. Do such corporations have the power to acquire and own home office lands and buildings?
2. If they possess such powers, then what are the regulatory standards by which such acquisitions are to be measured?

The Michigan Blue Cross was originally incorporated as a Michigan nonprofit corporation on December 8, 1938 under the Michigan General Corporation Act (Act 327, P.A. 1931; C.L. 1948 § 450.1, et seq.; M.S.A. 1963 Rev. Vol. § 21.1, et seq.) as the Michigan Society for Group Hospitalization. Upon the enactment of Act 109, P.A. 1939<sup>1</sup> Michigan Blue Cross amended its articles of incorporation, changing its name to the Michigan

<sup>1</sup> But see Act 147, P.A. 1967; M.S.A. Cur. Mat. § 4.1700(6), which became effective June 28, 1967. The provisions of this act expire on December 31, 1968.

<sup>1</sup> C.L. 1948 § 550.501, et seq.; M.S.A. 1957 Rev. Vol. § 24.621, et seq.

Hospital Service and further providing that it was transacting business under the provisions of Act 109, P.A. 1939, in compliance with § 17 thereof.

Michigan Blue Shield was not incorporated under the general corporation act but, instead, was incorporated directly under the provisions of Act 108, P.A. 1939,<sup>2</sup> which authorized the creation of medical care service nonprofit corporations.

Both the Blue Cross and the Blue Shield acts contain a similar provision. The language which follows is found in Section 1 of Act 109, P.A. 1939, supra:

“\* \* \* Any such non-profit hospital service corporation shall be subject to regulation and supervision by the commissioner of insurance, as hereinafter provided. Any such non-profit hospital service corporation shall not be subject to the laws of this state with respect to insurance corporations except as provided in this act or with respect to general corporations governed by the corporation laws, and no such non-profit hospital service corporation may be incorporated in this state except under and in accordance with the provisions of this act: Provided, however, That the provisions of sections 117 to 132, inclusive, of Act No. 327 of the Public Acts of 1931, as amended, and as hereafter amended, shall be applicable to all corporations formed under or governed by this act, except as herein otherwise specifically provided.  
\* \* \*”

A comparable provision is found in Section 2 of Act 108, P.A. 1939, supra, as it relates to Blue Shield. Sections 117 to 132, inclusive, of Act 327, P.A. 1931, contain the nonprofit provisions of the Michigan General Corporation Act. Looking to Sections 125 and 126, it is clear that under Section 125 nonprofit corporations have the power to acquire, hold, protect and convey such properties as are naturally or properly within the scope of their articles.

Under Section 126, the property of all nonprofit corporations shall be acquired, held and disposed of only for lawful purposes.

Under Section 127, of the nonprofit provisions of the Michigan General Corporation Act, a nonprofit corporation may mortgage its property as security for its debts.

Further, reference is made to property in Section 118, supra, which provides that no nonprofit corporation shall be capitalized for an amount in excess of the sum of money necessary to carry out its purposes, including the purchase or leasing of such property as may be required for its offices or in its lawful business affairs.

It is my conclusion that the Blue Cross and Blue Shield corporations are empowered under the above cited provisions of the Michigan General Corporation Act to acquire real estate for home office purposes unless there is a specific provision in Acts 108 and 109, P.A. 1939, supra, respectively providing otherwise.

Looking to the provisions of Act 108, P.A. 1939, supra, under which the Blue Shield was created, I do not find any language which would remove the

<sup>2</sup> C.L. 1948 § 550.301, et seq.; M.S.A. 1957 Rev. Vol. § 24.591, et seq.

Blue Shield corporation from the benefits granted by the nonprofit provisions of the Michigan General Corporation Act. I cannot interpret the provisions of a Section 11 of said act (C.L. 1948 § 550.311; M.S.A. 1957 Rev. Vol. § 24.601) to prohibit the acquisition of a home office. The language of that section provides as follows:

"A non-profit medical care corporation shall, before beginning business, and at all time thereafter while engaged in business, maintain reserves in such form and amount as the commissioner of insurance may determine: Provided, That the funds of any such corporation shall be invested only in securities permitted by the laws of this state for the investment of assets of life insurance companies."

This language does not specifically prohibit the acquisition of real estate, nor remove the Blue Shield corporation from the nonprofit provisions of the Michigan General Corporation Act. This provision only requires that when securities are purchased, such securities must meet the requirements of the Insurance Code of 1956, for the investment of assets of life insurance companies. Further, the provisions of the Insurance Code with regard to the investment of assets of insurance companies have no application to the Blue Shield corporation unless so specifically provided in Act 108, P.A. 1939. Thus, only those provisions of the Insurance Code which specify the securities which may be purchased by a life insurance company are applicable to Blue Shield. Although the purchase of a home office by a life insurance company would be an investment under section 946 of the Insurance Code of 1956 (C.L.S. 1961 § 500.946; M.S.A. 1965 Cum. Supp. § 24.1946), this would have no bearing as to its treatment with regard to the Blue Shield corporation. There is nothing contained in Act 108, P.A. 1939, which would require that purchase of a home office by Blue Shield be treated as an investment requiring special statutory authorization.

Section 15 of Act 108, P.A. 1939, provides that:

"Each corporation subject to the provisions of this act is hereby declared to be a charitable and benevolent institution, and its funds and property shall be exempt from taxation by the state, or any political subdivision thereof."

This provision has been interpreted by this office in opinion No. 1036, O.A.G. 1949-50, p. 344, to provide tax exemption for the Blue Shield home office even though the home office was not occupied by Blue Shield at the time. The exemption from taxation with regard to the proposed home office of Blue Shield leads to the conclusion that Blue Shield was empowered to hold said real property. I am unable to find any language in Act 108, P.A. 1939, which would remove from Blue Shield those powers granted by the nonprofit provisions of the Michigan General Corporation Act.

The Blue Cross corporation under Section 9 of Act 109, P.A. 1939, also is required to invest in only those securities which may be purchased by a life insurance company and is also granted a tax exemption as to its funds and property in Section 15 of this Act. Furthermore, Section 2 of said act provides that the property and lawful business of the corporation shall be held and managed by a board of trustees or directors with such powers and authority as shall be necessary to execute the purposes of the corporation.

On the other hand, I can find no language in the act which specifically or impliedly prohibits the acquisition of a home office on the part of Blue Cross. The statements made with regard to Blue Shield, supra, are equally applicable to Blue Cross.

In answer to your first question, the Blue Cross and Blue Shield corporations have the power to acquire and own home office lands and buildings under the general powers granted to such corporations in the nonprofit provisions of the Michigan General Corporation Act.

You also wish to know what are the regulatory standards by which such acquisitions are to be measured. In the past your predecessors have used the regulatory standards set forth in Section 946 of the Michigan Insurance Code of 1956, supra, in determining whether to grant approval to Blue Cross-Blue Shield to purchase home office buildings and parking lots. There is no language in either the Blue Cross or the Blue Shield statutes which would make the provisions of Section 946 of the Michigan Insurance Code of 1956 applicable to Blue Cross or Blue Shield. There are no specific regulatory standards set forth in either the Blue Cross or the Blue Shield act from which you derive all powers to regulate and supervise such corporations. Therefore, your power to regulate the acquisition of a home office by Blue Cross and Blue Shield is limited to those powers expressly set forth in the Blue Cross and Blue Shield statutes.

In the past your predecessor, Commissioner Forbes, denied approval to Blue Cross to purchase a home office because "to permit the Michigan Hospital Service to make an investment in a non-liquid asset of \$675,000 does not appear to be justified." It would appear that your predecessor based his decision upon the power contained in both the Blue Cross and the Blue Shield acts,<sup>3</sup> which require said corporations to maintain reserves in such form and amount as the Commissioner of Insurance may determine.

The provisions of Section 12 of the Blue Cross act,<sup>4</sup> which provide that:

"All acquisition and administrative expenses in connection with such hospital service plan shall at all times be subject to the approval of the commissioner of insurance",

do not authorize you to regulate the acquisition of a home office by Blue Cross because an acquisition expense of the plan would clearly be the cost of acquiring new business and the purchase of a home office cannot be considered an administrative expense.

In summation, I do not find any specific regulatory standards by which you may regulate the acquisition of a home office set forth in either the Blue Cross or the Blue Shield statutes. All powers which you possess to regulate such acquisitions must come from said acts. I must therefore conclude that except for your power to require these corporations to maintain an adequate reserve, you are without authority to regulate their acquisition

<sup>3</sup> Sec. 11, Act 108, P.A. 1939; C.L. 1948 § 550.311; M.S.A. 1957 Rev. Vol. § 24.601.

Sec. 9, Act 109, P.A. 1939; C.L. 1948 § 550.509; M.S.A. 1957 Rev. Vol. § 24.629.

<sup>4</sup> C.L. 1948 § 550.512; M.S.A. 1957 Rev. Vol. § 24.632.

of a home office. Any actions taken in this regard would be subject to judicial review under Article VI, Sec. 28 of the Michigan Constitution of 1963.

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Attorney General.

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JUDGES: Municipal — Right of legislature to abolish office during term.

The legislature may abolish the office of municipal judge during the term for which certain judges have been elected and, except for accrued pension rights, the effect of such action would be to terminate the right of those judges to further compensation.

No. 4609

October 3, 1967.

Hon. Basil W. Brown  
Hon. Robert Richardson  
State Senators  
The Capitol  
Lansing, Michigan

Hon. Robert Traxler  
Hon. Donald E. Holbrook, Jr.  
State Representatives  
The Capitol  
Lansing, Michigan

You have requested an opinion on the following questions:

“(1) May the Legislature abolish the office of municipal judge during the term for which certain of the judges have been elected?”

“(2) If the Legislature does abolish the office of municipal judge during the term of a judge, is the municipality obligated to pay the salary and pension benefits to the judge for the balance of the term for which he was elected?”

There is a well established general rule of law which is applicable to both of these questions. It may be stated that in the absence of constitutional restrictions an office created by the legislature may be abolished by it, and when so abolished the incumbent has no further right to compensation. This rule was first enunciated in Michigan by Justice Cooley in *City of Wyandotte v. Jeremiah Drennan*, 46 Mich. 478, 480, 481 (1881):

“. . . Nothing seems better settled than that an appointment or election to a public office does not establish contract relations between the person appointed or elected and the public. The leading case of *Butler v. Pennsylvania*, 10 How. 402, has been universally regarded as having settled that question; and it has been followed by decisions in numerous cases. . . .

“. . . Offices are created for the public good at the will of the legislative power, with such powers, privileges and emoluments attached as are believed to be necessary or important to make them accomplish the purposes designed. But except as it may be restrained by the Constitution the Legislature has the same inherent authority to modify or abolish that it has to create; and it will exercise it with the like considerations in view. Whoever accepts a public office must accept it with this principle of constitutional law in view; and if his compensation