

question is "No" and that the present prohibition of Section 21 of the Judges' Retirement Act is neither superseded or voided by, nor repugnant to Article IX, Section 24 of the Michigan Constitution of 1963.

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680618-1

PUBLIC OFFICES & OFFICERS: Conflict of interest.

COLLEGES & UNIVERSITIES: Officers in conflict of interest.

A vice president for business and finance and treasurer of a state university is prohibited from having a personal pecuniary interest in a contract with his institution which might require him to choose between advancing his own interest or that of the public.

Where a vice president for business and finance and treasurer of a state university, acting on behalf of a corporation in which his wife owns a substantial interest (1) employs the principal architect of the university to design a building, (2) obtains funds from the bank in which the university has its deposits to finance construction of the building, (3) employs contractors who do substantial business with the university to erect the building, and (4) leases a substantial portion of the building to a company which does considerable business with the university, there is such an indirect interest in the contracts of the university with these firms as to constitute a substantial conflict of interest in violation of Article IV, Section 10 of the Michigan Constitution of 1963 on the part of the vice president.

No. 4646

June 18, 1968.

Representative Jack Faxon
House of Representatives
Lansing, Michigan

You requested my office to investigate certain financial transactions involving Philip J. May, Vice President for Business and Finance and Treasurer of Michigan State University and, based upon facts and circumstances ascertained by this investigation, to render an opinion as to whether a conflict of interest exists between his personal financial ventures and his public responsibilities.

In his official capacity as Vice President for Business and Finance and Treasurer of Michigan State University Mr. May is the chief administrative officer responsible for fiscal affairs of the institution. Originally appointed as Comptroller on March 15, 1947 and subsequently given the title of Vice President for Business and Finance on July 11, 1957, Mr. May has held this position for more than twenty years. Subject to broad policies established by the Board of Trustees, his duties include the collection, management, investment and disbursement of the funds of the institution. On behalf of the Board, he deals with persons and firms doing business with the University, reviewing their claims for payment and making recommenda-

tions to the Board as to the validity, appropriateness and amount of such claims. He also guards the property of the University by seeing that it is properly constructed, maintained and insured. To carry out these functions efficiently he has been granted discretionary powers subject always to review by the President of the University and the Board of Trustees. While ideally these duties should be carried out by one who has not developed any outside business interests in the community, the Board of Trustees in its wisdom has not seen fit to establish such a blanket prohibition so that only those non-University business ventures of a Vice President for Business and Finance which conflict with his obligation to devote faithful, unbiased service to the public are deemed to be in violation of law.

In this regard it may be helpful to give recognition to the basic concept of the conflict of interest law. This concept is that in determining whether a conflict of interest permeates a contract, it need not be demonstrated that a public official has in fact derived any personal benefit from his dual role of public officer and private entrepreneur; it need only be demonstrated that his personal pecuniary interests *may* affect his judgment. Even though given a choice between advancing his own interest or that of the public, the official might be so highly dedicated to the public welfare that he would sacrifice his own well-being in the higher public interest, the law dictates that he must not place himself in a position which would require him to make this choice. As succinctly summarized in *The People on relation of Aldert Plugger and others v. The Township Board of Overysse* (1863), 11 Mich. 222, 225:

“ * * * Fidelity in the agent is what is aimed at, and as a means of securing it, the law will not permit the agent to place himself in a situation in which he may be tempted by his own private interest to disregard that of his principal. * * * ”

More recently, in *United States v. Mississippi Valley Generating Co.* (1961), 364 U.S. 520, 549, 550, Mr. Chief Justice Warren expressed the views of six members of the United States Supreme Court on this subject in reference to the federal conflict of interest statute, 18 U.S.C. § 434, in the following terms:

“The obvious purpose of the statute is to insure honesty in the Government's business dealings by preventing federal agents who have interests adverse to those of the Government from advancing their own interests at the expense of the public welfare. *United States v. Chemical Foundation*, 272 U.S. 1, 18, 71 L ed 131, 144, 47 S Ct 1. The moral principle upon which the statute is based has its foundation in the Biblical admonition that no man may serve two masters, Matt. 6:24, a maxim which is especially pertinent if one of the masters happens to be economic self-interest. * * *

“It is also significant, we think, that the statute does not specify as elements of the crime that there be actual corruption or that there be any actual loss suffered by the Government as a result of the defendant's conflict of interest. This omission indicates that the statute establishes an objective standard of conduct, and that whenever a government agent fails to act in accordance with that standard, he is guilty of violating the statute, regardless of whether there is positive

corruption. The statute is thus directed not only at dishonor, but also at conduct that tempts dishonor. This broad proscription embodies a recognition of the fact that an impairment of impartial judgment can occur in even the most well-meaning men when their personal economic interests are affected by the business they transact on behalf of the Government. To this extent, therefore, the statute is more concerned with what might have happened in a given situation than with what actually happened. It attempts to prevent honest government agents from succumbing to temptation by making it illegal for them to enter into relationships which are fraught with temptation. Rankin v. United States, 98 Ct Cl 357.

" * * * "

Turning to Mr. May's non-public financial activities, because of their complexity it will be helpful to categorize them in the following manner:

- I. Directorship of Michigan National Bank
- II. Transactions relating to 608 South Washington Avenue, Lansing, Michigan
- III. Transactions relating to IBM Building at 1111 Michigan Avenue, East Lansing, Michigan
 1. Acquisition of site
 2. Obtaining financing
 3. Construction of building
 4. Leasing of building
 5. Ownership of building

I. Directorship of Michigan National Bank

During the entire tenure of Mr. May, the University has maintained a commercial checking account at Michigan National Bank in which there is normally a balance of approximately a million dollars. Michigan National Bank has also made loans to the University and purchased its bonds on self-liquidating projects.

From January 8, 1965 until September 27, 1967 Mr. May served as a Director of the Lansing Board of Michigan National Bank and from May 14, 1965 until September 27, 1967 he also served as a Director of the Central Board of the Michigan National Bank. For these services he was paid a fee of \$50.00 for attending local board meetings and a fee of \$100 for Central Board meetings. During the calendar year 1965 he received a total of \$2,250.00 in director fees. On September 27, 1967 Mr. May resigned from both directorships, an act which he attributed to an opinion of my office issued on September 26, 1967. This opinion, No. 4587, held that officers of state institutions of higher education may not serve as directors of private corporations doing business with that institution since, as a corporate director, he is legally bound to safeguard, care for and promote the corporation's interests and public's interest at the same time.

II. Transactions relating to 608 South Washington Avenue, Lansing, Michigan

The earliest financial venture of Mr. May relevant to this inquiry occurred in November, 1954 when Philip May and Viola, his wife, acquired a building

at 608 South Washington Avenue, Lansing, Michigan, and executed a mortgage to the Ann Arbor Trust Company to secure a loan of \$32,500.00. This mortgage was discharged and another mortgage in the amount of \$165,000.00 substituted therefor on July 25, 1955. As security for the latter loan, certain leases with USF&G and IBM were assigned to the Ann Arbor Trust Company. Ann Arbor Trust, in turn, assigned this mortgage to the Lincoln National Life Insurance Company of Fort Wayne, Indiana.

The Ann Arbor Trust Company has been conducting business with Michigan State University for more than thirty years, performing the following services: (1) it arranges financing for self-liquidating projects; (2) it acts as trustee for bondholders of Michigan State University paying such bonds and coupons issued by the University; and (3) it is fiscal agent for investments of the University and in this capacity acts as custodian of securities, collects dividends and interest, and prepares monthly reports and remittances.

For its services in connection with the placement of loans, the Trust Company receives three-eighths of 1% of the loan and receives normal trustee fees for other services performed by it for Michigan State University. For serving as fiscal agent in handling securities, the Ann Arbor Trust Company receives an annual fee of \$1,625.00.

Lincoln National Life Insurance Company provides group life insurance for employees of Michigan State University and in so doing receives the active support and participation of the University. For example, the University Business Office over the signature of Mr. May on October 8, 1964 explained the benefits of this insurance and encouraged new members of the faculty and staff to sign up for this program.

III. Transactions relating to IBM Building at 1111 Michigan Avenue, East Lansing, Michigan

1. Acquisition of Site

On November 12, 1965 Philip May and Viola, his wife, executed a land contract under the terms of which the John and Elizabeth Whitely Foundation agreed to convey to them a parcel of land fronting on Michigan Avenue. The agreed consideration for this parcel was \$335,000.00. The contract, however, contained a release clause which permitted the purchasers to release the East 213 feet facing Michigan Avenue for \$200,000.00. Such a release was in fact implemented by a warranty deed dated July 14, 1966 signed by Clifford W. McKibbin, President of the Whitely Foundation, and Harry Hubbard, Secretary, conveying this portion of the parcel to the Philip Jesse Company. It is worthy of note that the land upon which the IBM Building was erected was initially purchased by land contract by Philip J. May and Viola, his wife, but that the deed in partial fulfillment of this land contract conveyed the land to the Philip Jesse Company by a warranty deed that specifically refers to "November 12, 1965, the date of a certain land contract in partial fulfillment of which this deed is given." It is also noteworthy that, prior to the conveyance to the Philip Jesse Company, monthly payments on the land contract were made by Mr. and Mrs. May.

On May 26, 1967, a year and a half after the execution of the land contract, the remainder of the Foundation property was conveyed to Alan Ginsburg and Steve J. Annas doing business as Alco Construction Corporation for 200,000.00. This deed was executed by Philip J. May and Viola H. May.

2. *Obtaining Financing*

On August 29, 1967, Philip Jesse Company by Philip J. May, President, executed a mortgage to the Michigan National Bank in the amount of \$1,100,000.00. This loan was described by the bank as a construction mortgage and, as of this moment, no determination has been made as to whether to execute a long term mortgage on this property. The relationship between the Michigan National Bank and Michigan State University was described above in relation to Mr. May's directorships on the Lansing Board and the Central Board of this bank.

According to statements of bank officials, Mr. May originally approached officers of the bank and asked for a construction loan to either himself and his wife or a corporation to be formed by him. Mr. May also personally submitted to the bank the plans for the prospective building, letters of intention to lease from tenants, as well as his own financial statement for the bank's consideration in determining whether to make the loan.

3. *Construction of Building*

With the acquisition of the land and sufficient funds for construction purposes, the Philip Jesse Company proceeded to arrange for the construction of an office building on the site. Ralph Calder and Associates, an architectural firm that may be described as the principal architect for Michigan State University in view of the fact that in the past 10 years it received some \$3,600,000.00 in fees for designing projects costing approximately \$80,000,000.00, was retained to design the building. This architect was paid a fixed fee of \$20,000.00 for designing the IBM Building, an amount which is less than that normally paid for architectural services in designing a building costing some \$967,000.00 excluding the site. There is some dispute as to whether the charge of the architect was a normal charge for services or whether the Philip Jesse Company received the benefit of a specially reduced rate. This dispute centers around the services actually performed by the architect. Mr. May claims Ralph Calder took no part in designing the electrical or mechanical portions of the building nor in its interior layout as these were prepared by the electrical contractor, the mechanical contractor and the tenants respectively. Mr. May also claims that the architect did not provide the usual supervisory services. There is some evidence, however, that the architect and a member of his staff looked in at the job on occasions and attended meetings with contractors. But for the purpose of determining whether or not a conflict of interest existed, these issues of fact are not determinative. As stated above, there is a conflict of interest where a public official places himself in a position where he must decide whether to advance his personal interest or the interest of the public; proof that his personal interest was in fact advanced in any particular case is not needed although the fact that such benefit did accrue may be considered relevant since it tends to shed some light upon potential conflicting considerations facing the public officer. In this case,

although the financial arrangements with the architect were unusual and appear to have been favorable to the owner, there is no conclusive evidence that the fee was established at a particularly low rate.

In addition to employing the principal architect of the University to design its building, Philip Jesse Company employed three contractors to perform the construction work, each of whom had conducted considerable business with the University over a long period of time. These contractors were: Haussman Construction Company which had 8 jobs amounting to \$1,800,000.00 in volume during the past 10 years with the University; Spitzley Corporation which had 7 jobs of approximately \$6,353,000.00 with the University; and Hatzel & Buehler which had approximately \$1,768,000.00 in jobs for the University in the past 10 years. Each of these contractors were hired by the Philip Jesse Company without advertising for bids and without seeking prices of competitors for the same work. The contractors' charges to Philip Jesse Company for performing their respective services were: Haussman Construction Company \$602,000.00; Spitzley Corporation \$275,000.00; Hatzel & Buehler \$90,000.00. Without a costly analysis of the value of work performed by these contractors, it is difficult to determine whether the Philip Jesse Company received favorable treatment and so this factual issue must, for the purpose of this opinion, also remain inconclusive.

4. Leasing of Building

The principal tenant of the building at 1111 Michigan Avenue, East Lansing, Michigan, is IBM, which occupies approximately 44% of the building and pays \$48,800.00 per year in rent. Other tenants are: Hayes Enterprises; Birmingham Mortgage Service Inc.; Blue Cross; Mobil Oil Corporation; Michigan Bell Telephone Company; Snelling & Snelling Inc.; and Michigan Association for Regional Medical Programs. IBM has done a considerable volume of its business with Michigan State University during the past 10 years. For example, in the fiscal year ending June 30, 1967 the University leased \$494,437.00 in services from IBM.

5. Ownership of Building

Before it can be determined whether such a conflict exists, it must be recognized that the transactions involving the IBM Building were conducted, not by Mr. May personally, but by the Philip Jesse Company and that Mr. May is neither officer, director or stockholder of Philip Jesse Company.

The Philip Jesse Company was organized on July 12, 1966 with Philip J. May and Viola H. May as its incorporators. Initial value of stock in the corporation was held by Philip J. May and Viola H. May—\$30,000.00; Robert and Genevieve May—\$30,000.00; Warren and Ada May—\$30,000.00; Virginia Sturges—\$10,000.00; but on November 21, 1966 Philip J. May transferred his capital stock in the Philip Jesse Company to his wife, Viola H. May, so that 30% of the stock in the Philip Jesse Company is now owned by Viola H. May.

But, although Mr. May no longer holds any official title or has any proprietary interest in the Philip Jesse Company, his involvement with and his intimate knowledge of its affairs makes it apparent that he has more than an academic interest in its welfare. His status, while difficult

to define, can therefore be viewed as that of agent either for his wife or other members of his family who are its owners and officers.

Thus, in summary, the wife of the Chief Financial Officer of Michigan State University, through a corporation known as the Philip Jesse Company and with the active participation of her husband acting either on his own or on her behalf, has managed to acquire a substantial interest in a major office building costing approximately \$1,200,000.00 by obtaining financing from a bank which handles a major portion of the funds of the University, having the building designed by an architect who is the principal architect of the University, and having as contractors who constructed the building those who do considerable work for the University. In addition, the principal tenant of the building is a company which performs considerable services to the University for substantial sums. Under these circumstances, you ask, is there a conflict of interest involved?

The governing provision is Article IV, Section 10, of the Michigan Constitution of 1963 which provides:

"No member of the legislature nor any state officer shall be interested *directly or indirectly* in any contract with the state * * *."
(emphasis added)

In Opinion No. 4587, *supra*, I considered the question of whether vice presidents of state universities are state officers within the contemplation of this provision and concluded that they are. In so concluding I pointed out how anomalous it would be to prohibit board members from having a conflicting interest in a state contract if such prohibition did not equally apply to its officers. Such an anomaly would effectively defeat the intent of the framers of the Constitution since it is the officers who have the greater involvement in the negotiation, execution and administration of contracts with the institution.

Thus the substantive issues may be narrowed to two questions. They are:

1. Can a state officer be in conflict of interest where the transactions are conducted by a corporation in which his wife has a substantial interest although he is neither an officer, director or stockholder of this corporation?
2. Can a state officer be in conflict of interest by engaging the services of firms that do considerable business with the state institution he serves?

Only if the answer to both of these questions is in the affirmative can it be concluded that the above described transactions involved Mr. May in a conflict of interest. In addition, the answer to both questions must turn on whether the interest is "indirect" since neither situation clearly involves a "direct" interest in a contract with the state.

These questions will be dealt with individually.

1. *Wife's Interest*

I am aware of the fact that since the enactment of Act 66, P.A. 1844, a series of enactments culminating in adoption of Article X, Section 1 of the Michigan Constitution of 1963, have effectively abrogated the common law disabilities of married women so that they may enter into contracts

and deal with their own property without consent of their husband. These laws, however, do not necessarily result in a termination of the mutual interest of husband and wife to the extent that a benefit to one may not constitute an indirect benefit to the other.

In *Woodward v. City of Wakefield* (1926), 236 Mich. 417, for example, the Michigan Supreme Court held that a land contract entered into between a city and the mayor's wife involved a conflict of interest thereby attributing to the mayor a financial transaction involving his wife. The Court justified this action by recognizing the closeness, if not the identical interest, of a husband and his wife. On page 421 the Court stated:

" * * * Anyone who knows of the selfishness of human nature and the sentiment of the family knows that he was in no position to do his duty by the city.

"But it is said he received none of the profits of the contract. It is useless to argue that when the wife sells her property at the top price, and thereby secures a good profit, that the husband does not indirectly profit by it. They live in the same home and their property interests are more or less of a community interest. * * * The case of *Lewick v. Glazier*, 116 Mich. 493, is cited upon the question of relationship. It was there held that because the son was the contemplated contractor for the erection of municipal waterworks, his father, who was on the council, was not disqualified to vote. We think this case can be easily distinguished by calling attention to the difference in the money affairs of husband and wife, and the money affairs of father and son. * * *"

True, in *Woodward* the court noted that the wife of the mayor allowed her husband to manage her business affairs and therefore, in acting as her agent, he had a duty to protect her interests. But in this respect there is a marked similarity with the circumstances we have at hand since, in applying for the mortgage loan and arranging for the construction and occupancy of the IBM Building Mr. May must be deemed to have acted for the benefit of his wife. Were all of these transactions carried out by Viola May instead of Philip May, the case might be distinguishable.

Another pertinent case is *Barber v. Kolowich* (1938), 283 Mich. 97, which involved a bank loan to the wife of an officer and director of a bank in excess of the maximum permitted by law. Although this case turned principally upon the issue of whether the loan was in fact made to the wife personally or to the officer-director of the bank, the court noted on page 104 that:

" * * * If a loan is made by the borrower's wife, after he has obtained the legal limit from the bank, it casts suspicion on the transaction. * * *"

So here, the fact that the transactions are carried out in the name of the wife does not make the transactions hers. An officer of the state may not divest himself of responsibility for a conflict of interest contract by conducting them in the name of a corporation in which his wife holds a substantial interest.

A further indirect interest which a husband has in his wife's economic well-being that must be considered is his duty to provide her with shelter, fuel, clothes, medical and dental services. *Szatynski v. Szatynski* (1950), 327 Mich. 613; *People v. Beckman* (1927), 239 Mich. 590. If he fails in this duty she may pledge his credit for this purpose and the law presumes it was done with his assent. *Annis v. Manthey* (1926), 234 Mich. 347. Thus, in the words of the Michigan Supreme Court in *VanDommelen v. VanDommelen* (1922), 218 Mich. 149, 154:

"Marriage is a life contract imposing on the husband support and maintenance of the wife in sickness and in health during life, contingent only on termination sooner by decree of a court for statutory reasons. * * *"

In the absence of pending divorce or separation proceedings, therefore, it is a fact that benefits accruing to one spouse are enjoyed by the other. Thus the interest of Mrs. May in the Philip Jesse Company must be considered as an interest of Mr. May in that company and it may therefore be concluded that Mr. May has a substantial interest in this company.

2. *Transactions with Firms doing Business with the State*

In the paradigm conflict of interest case, the contract is one between a public servant (or some firm in which he has a substantial interest) and the state or one of its agencies or political subdivisions. But in this case, it must be noted, we have under consideration a series of contracts between the officer and certain private companies which, in turn, are in contractual relationship with the public entity. Thus, whether such a factual situation can constitute a conflict of interest depends upon whether the word "indirect" as used in Article IV, Section 10, can be so extended.

In Opinion No. 4555, April 12, 1967, I was called upon to respond, *inter alia*, to the question of whether a person serving simultaneously as an employee of a bank and as a member of a school board doing business with that bank was in a conflict of interest. My response was that a conflict of interest could be present in such circumstances depending upon the extent of that person's involvement with the particular business transaction. In other words, there is no *per se* conflict of interest in simultaneously serving as bank employee and school board member but, *depending upon the particular circumstances*, such a person could be in conflict of interest. The kinds of circumstances envisioned are bank employees given discretionary authority who would receive reward and recognition for obtaining and holding the business of the school district, not some employee who performs skilled or semi-skilled craft, janitorial or purely ministerial functions for the bank.

Analysis of this rule reveals a close analogy to the situation under discussion. An employee is a person in contractual relation with his employer. The terms of his contract, whether written or oral, provide that he perform certain services under certain conditions in return for which he is to receive remuneration in the form of salary and fringe benefits. An architect, mechanical contractor, or electrical contractor provides services and/or material under certain conditions for which he receives remuneration. The principal difference, it would appear between a bank in contractual relationship with its employees and the current situation involving an architect

and builder in contractual relationship with a state officer is that the former involves a contract of employment and the latter a contract for services with an independent contractor. Much learning and analysis has gone into the distinction between employees and independent contractors for the purpose of determining rights and liabilities under workmen's compensation laws, social security laws, fair labor standards laws and the common law doctrine of *respondeat superior*, but I do not believe that there is any substantive distinction between these two roles for the purpose of determining the existence of a conflict of interest. The distortion of a public officer's duty of loyalty towards the public is not dependent upon whether his personal interest is derived from a contract of employment with one doing business with his institution or a contract for services with one doing business with his institution.

Article IV, Section 10, of the Michigan Constitution of 1963, in its pronouncement of the golden rule of public service, says no state officer "shall be interested directly or *indirectly* in *any contract* with the state or any political subdivision thereof which shall cause a *substantial* conflict of interest." (emphasis added) In this case there are contracts with the state (contracts between Michigan State University and the architect, as well as various construction contractors) and, if it be determined that the state officer, by virtue of his relationship to these contractors, causes a substantial conflict with his public duties, it must then be concluded that there is an unlawful conflict of interest which exists.

In *United States v. Mississippi Valley Generating Co.*, *supra*, the United States Supreme Court held that a government officer, by partaking in preliminary negotiations between the government and sponsors of an electric power project while an officer of a corporation likely to share in the financing of the venture, violated the federal conflict of interest statute.

In *Mississippi Valley Generating Co.* the person (Mr. Adolphe H. Fenzell) involved in the conflict of interest was an officer and director of a financial institution who undertook to advise the federal government with respect to a contract between the government and a separate third party (Mississippi Valley Generating Co.). The only expectation of gain of this person was that his financial institution was likely to share in the financing of the project. Nevertheless the contract between the government and the generating company was canceled and the company denied out-of-pocket expenses because of the illegal conflict of interest under 18 U.S.C. § 434 making it an offense for a person to be "directly or indirectly" interested in the pecuniary profits or contracts of such corporation.

Mr. Justice Harlan dissented and, in so doing, stated:

"The view which I take of the matter also fits the purposes of § 434. The policy and rationale of the statute are clear: an individual who negotiates business for the Government should not be exposed to the temptation which might be created by a loyalty divided between the interest of the Government and his own self-interest; the risk that the Government will not be left with the best possible transaction is too great. In terms of these factors, a finding of some commitment, arrangement or understanding between the prime contractor and the subcontractor should be required when the contracting officer's adverse

interest arises by way of a subcontract, since only where some such arrangement exists can the officer be taken to have known that any undue benefit he confers on the prime contractor will not eventually redound to the profit of some other competing subcontractor.”
(page 570)

But the majority was not persuaded. The Chief Justice, speaking for the majority, held:

“ * * * First, both the court below and the respondent intimate that Wenzell could not have expected to benefit from the contract because there was no formal contract or understanding between First Boston and the sponsors to the effect that First Boston would be retained should the sponsors enter into an agreement with the Government. However, we do not think that the absence of such a formal agreement or understanding is determinative. The question is not whether Wenzell was certain to benefit from the contract, but whether the likelihood that he might benefit was so great that he would be subject to those temptations which the statute seeks to avoid. That there was more than a mere likelihood in this case has already been shown. * * *”
(page 560)

Are not these words of Justice Warren appropriate to the case at hand? Here, Philip J. May entered into contractual relationships with Ralph Calder and Associates, Haussman Construction Company, Spitzley Corporation, Hatzel & Buehler and IBM. Each of these firms has performed and still performs substantial business with Michigan State University. It is Mr. May's direct responsibility to review and recommend payments to each of these companies and to further protect the interests of the State University in dealing with these firms. Occasions can easily arise when disputes between the University and these contractors concerning fulfillment of their respective obligations must be resolved. It may have to be determined whether the many details of the specifications have been carried out by the contractor; whether a particular payment was proper, excessive or insufficient; whether non-economic provisions, such as the non-discrimination clause, have been properly carried out by the contractor. Can a public officer make an objective decision with respect to such disputes if he has financial dealings with these same contractors? Were Mr. May in a position other than that of Vice President for Business and Finance, his objectivity would not be so vital to the interests of the people of the state. Whether Mr. May has in fact taken any advantage of his position as Vice President for Business and Finance in obtaining favorable treatment from any of these contractors is not in issue in this opinion. We are concerned only with the problem of whether his decisions might be distorted as a result of his personal financial involvement with these very contractors.

Consequently it is my opinion that, based upon the above circumstances, a conflict of interest does exist between Mr. May's obligations to the public as Vice President of Business and Finance of Michigan State University and his personal financial transactions involving the Philip Jesse Company and its contractual arrangements with IBM, Haussman Construction Company, Spitzley Corporation, Hatzel & Buehler, and Ralph Calder and Associates. I recognize that the question is a close one and that it would be unfair to

penalize Mr. May for his past conduct: nevertheless I do not believe that the situation involving the IBM Corporation as principal tenant in a building in which Mrs. May has a substantial interest should be permitted to continue or that Mr. May should be permitted, in the future, directly or indirectly, to employ the services to any substantial degree of any person or firm that does considerable business with the University.

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Attorney General.

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ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS:

Stockholders in corporations which perform architectural, engineering or land surveying services do not have to be registered or licensed in such professions under Act 240, P.A. 1937, C.L. 1948 § 338.551 et. seq., provided the corporation is not organized under the professional service corporation act, Act 192, P.A. 1962, M.S.A. 1963 Rev. Vol. § 21.315 (1) et seq. Ownership of assets of a partnership performing architectural engineering or land surveying services does not in and of itself constitute the owner of such assets as a partner and such person would not be required to be registered or licensed in such profession.

No. 4627

June 26, 1968

Mr. Lenton G. Sculthorp, Director
Department of Licensing and Regulation
2nd Floor, Lafayette Building
Detroit, Michigan 48226

You have advised me that there are a number of corporations and partnerships in the State of Michigan offering architectural, professional engineering and land surveying services to the public, where the shares in the corporation, or the assets of the partnership, are owned wholly or in part by nonregistered persons. A so-called "dummy" corporation or partnership is formed with nonregistered persons owning the corporate stock or the assets of the partnership, but the officers and directors are registered in this State as architects, professional engineers or land surveyors. Therefore, you request my opinion to the following question:

"Could a 'dummy' corporation or partnership be formed in this state to perform architectural, professional engineering or land surveying services with nonregistered persons owning the corporate stock of the corporation or the assets of the partnership but the officers and directors or partners are registered in the State of Michigan as architects, professional engineers or land surveyors?"

The pertinent sections of the architects, engineers and surveyors registration act, Act 420, P.A. 1937, are Sections 1 and 17, being C.L. '48 §§ 338.551 and 338.567; M.S.A. 1957 Rev. Vol. §§ 18.84(1) and 18.84(17), respectively. Section 1 reads as follows: