

28 of the general property tax act,² one of my predecessors held specifically in O.A.G. 1925-1926, p. 125, that Act 94, P.A. 1925, supra, was not in conflict with the constitutional powers of the Tax Commission. Such holding was premised upon the authority of the legislature to withdraw designated property from ad valorem taxation and to impose thereon a specific tax, thereby removing it from the sphere of jurisdiction of persons administering the ad valorem tax laws.

A statute that imposes a specific tax on commercial forest reserves in lieu of the general ad valorem tax is constitutional. Whether public policy should countenance the preferential treatment of owners of commercial forest reserves land is within the discretion of the state legislature. Concern over diminishing sources of local revenue must be addressed to the legislature which has authority to respond.

FRANK J. KELLEY,
Attorney General.

691202.2

COLLEGES AND UNIVERSITIES: Member of governing board in conflict of interest.

CONFLICT OF INTEREST: State officer in substantial conflict of interest.

CONSTITUTIONAL LAW: Conflict of interest of state officer.

A person who has matriculated at a state university as a candidate for a post graduate degree is in a substantial conflict of interest prohibited by the Constitution if during the time he is a student at the state university he is elected to and serves upon the governing body of the state university in which he is enrolled. However, the governing body of a state university may form an advisory board with student participation.

No. 4679

December 2, 1969.

Hon. George F. Montgomery
Majority Floor Leader
House of Representatives
Lansing, Michigan

You have requested my opinion on the following question:

"Would a terminal degree candidate, at a state institution of higher education, be considered in conflict of interest if he were to run for and win a seat on that institution's governing board?"

Your question is related to a person who has enrolled in a state university for the purpose of earning a Doctor of Philosophy degree and who would during the time he is pursuing but before he has completed his academic program, seek and obtain nomination and election to the governing body

²Sec. 28 of Act 206, P.A. 1893, as amended, being M.C.L.A. § 211.28; M.S.A. 1969 Cum Supp. § 7.28.

of the state university in which he is matriculated. Assuming these facts to be true, the person in question would be serving as an elected member of the governing body of the state university in which he is a student working toward a graduate degree.

In Article VIII, Sec. 5, Michigan Constitution of 1963, the people have entrusted the general supervision of the University of Michigan to the Regents of the University of Michigan, the general supervision of Michigan State University to the Board of Trustees of Michigan State University, and the general supervision of Wayne State University to the Board of Governors of Wayne State University. Each of these governing bodies is a body corporate composed of eight members elected by the people as provided by law. Other state institutions of higher education established by law having authority to grant baccalaureate degrees are governed by boards of control whose members are not elected by the people but rather they hold their respective offices by appointment of the governor by and with the advice and consent of the senate as provided in Article VIII, Sec. 6 of the Michigan Constitution of 1963.

The Michigan Supreme Court has held in *Attorney General, ex rel. Cook v. Burhans* (1942), 304 Mich 108, that the regents of the University of Michigan are state officers. The same rule applies to members of the Board of Trustees of Michigan State University and the members of the Board of Governors of Wayne State University.

Article IV, Sec. 10 of the Michigan Constitution of 1963 provides:

"No member of the legislature nor any 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. The legislature shall further implement this provision by appropriate legislation."

The Attorney General has ruled that members of governing boards of state institutions of higher education are state officers within the purview of Article IV, Sec. 10, O.A.G. 1967-1968, No. 4587, page 118.

The Michigan Supreme Court has held in *Booker v. Grand Rapids Medical College* (1909), 156 Mich 95, that the relationship between a student enrolled in a private college and the college was based upon contract. After the college had accepted the student and partially performed its contractual obligations and the right of the student to continue his studies rested upon contract, the college could not, under the contract, refuse to permit the student to continue his attendance at the college.

Such ruling is in accord with the general rule in this country that a person who has matriculated at a university establishes a contractual relationship with the university under which contract he is entitled to pursue his selected course of study and receive a degree awarded for successful completion thereof. The student agrees to comply with all requirements of the university for a degree and the university agrees to confer upon him a degree on his compliance with the university's requirements. The acts on the part of the student and on part of the university constitute a contract between the student and the university.

Tate v. North Pacific College (Ore. 1914), 140 P 743;

Anthony v. Syracuse University (1928), 231 N.Y.S. 435;
State, ex rel. Burg v. Milwaukee Medical College (Wis. 1906),
106 N.W. 116;
Carr v. St. John's University, New York, 231 N.Y.S. 2d 410,
affirmed in 235 N.Y.S. 2d 834 (1962).

These cases all related to students enrolled in private colleges and universities, but the same rule applies equally to persons enrolled in a public college or university. The reasoning of these cases is persuasive of the conclusion that a person who matriculates at a public university enters into a contract with the university, whereby the student agrees to complete all the requirements of the university and the university agrees to confer a degree upon his complying with the requirements of the university. Thus, upon satisfactory completion of the course of study, the university must award the degree that has been earned by the student.

It must follow that the person in question, by matriculating in a state university in pursuit of studies leading to a Doctor of Philosophy degree, has entered into a contract with the university to receive such degree upon successful completion of his studies and upon compliance with all reasonable requirements of the university.

Academic degrees are awarded in the name of the University of Michigan by the Board of Regents. Sec. 11 of Act 151, P.A. 1851, being M.C.L.A. § 390.11; M.S.A. 1968 Rev. Vol. § 15.911. Comparable authority is vested in the Board of Trustees of Michigan State University to confer degrees on behalf of the University. Sec. 8 of Act 269, P.A. 1909, being M.C.L.A. § 390.108; M.S.A. 1968 Rev. Vol. § 15.1128. The Board of Governors of Wayne State University is empowered to grant degrees on behalf of Wayne State University. Sec. 5 of Act 183, P.A. 1956, as amended, M.C.L.A. § 390.645; M.S.A. 1968 Rev. Vol. § 15.1350(5).

It has been demonstrated that such a person who is the party to your inquiry would have an interest in a contract with the university, an agency of the state. *Branum v. Board of Regents of University of Michigan* (1966), 5 Mich App 134. Is his interest in such contract substantial so as to be prohibited by Article IV, Sec. 10?

The Attorney General has construed the term "substantial," when used by the people in Article IV, Sec. 10, to mean material as opposed to trivial, and the conflict of interest must involve a pecuniary or beneficial interest. O.A.G. No. 4492, 1965-66, p. 216.

No extended effort need be made to show that the interest of a person in such contract is substantial as that term is used in Article IV, Sec. 10. A degree awarded by a university has been defined as a grade or rank to which scholars are admitted by a university in recognition of their attainments, such as degree of bachelor, master and doctor. *In re Portugal* (N.J. App. 1957), 129 A 2d 450. It has been held that "Doctor" as a prefix to a person's name signifies an academic distinction founded upon having received a degree, such as D.D., LL.D., Ph.D. or M.D. *Commonwealth v. New England College of Chiropractic, Inc.* (Mass. 1915), 108 N.E. 895.

It is not possible to ascertain the ultimate economic value in the expanded learning capacity of a person awarded a Doctor of Philosophy degree. However, it is common knowledge that such a degree is highly prized and is awarded after many years of work and at considerable economic expense to the student. In this time of mass education, the possession of such a degree from a respected university appears to be a mandatory prerequisite to any responsible and well-paying academic position. Thus it can only be concluded that the interest of a student in a contract to earn a Doctor of Philosophy degree from a state university is substantial in that such interest is material rather than trivial and is both pecuniary and beneficial.

Under the authorities that have been listed, it is abundantly clear that there would be a substantial conflict of interest violative of Article IV, Sec. 10 if a terminal degree candidate at a state institution of higher education were to be elected to and serve upon that institution's governing board during the time he was a candidate for the degree.

Therefore, it is my opinion that such a person would have an interest in a contract with the state university, which shall cause a substantial conflict of interest, contrary to Article IV, Sec. 10 of the Michigan Constitution of 1963.

It should be noted that there are valid arguments for having the advice and counsel of students in the development of university policy. Should the governing body of the state university form an advisory body with student participation, the constitutional prohibition referred to in this opinion does not prohibit and should not discourage such arrangement.

FRANK J. KELLEY,
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691209.1

CRIMINAL LAW: Bureau of Criminal Identification.

RECORDS: Bureau of Criminal Identification.

Except for records of sexually motivated crimes, criminal records of convicted individuals are not confidential.

No. 4683

December 9, 1969.

Mr. George E. Thick, II
Prosecuting Attorney
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Saginaw, Michigan

Directing my attention to Act 289, P.A. 1925, as amended,¹ you have requested my opinion on whether your office is prohibited by law from providing access to criminal records or "rap sheets" of certain convicted individuals to representatives of the news media for general publication.

¹M.C.L.A. § 28.241 et seq; M.S.A. 1969 Rev. Vol. § 4.461 et seq.