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,
Attorney General.

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
Court House
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.

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

The statute to which you refer created a bureau of criminal identification, records and statistics under supervision of the department of state police and provides for the maintenance of criminal records and statistics.[2]

The director of the bureau is appointed by the director of the Michigan state police (formerly commissioner of public safety)[3] and is required to provide all reporting officials with forms and instructions specifying the nature of the information required, the time the information is to be forwarded to him and the methods of classifying such information. He is to cooperate with and assist other law officers in the state in the establishment of a complete state system of criminal identification. Under Sec. 3 of the act local law enforcement officers, in turn, are required to furnish him with the fingerprints, descriptions and other information of persons arrested for a felony or misdemeanor not cognizable by a justice of the peace. The statute gives recognition to the individual's right of privacy by requiring the return to an accused of his fingerprints, arrest card and description without the necessity of a request in the event no charge is made or he has been found not guilty of the offense charged unless he has been previously convicted of a crime other than a misdemeanor or traffic offense or he has been charged with involvement in certain sex crimes; with respect to those records which are not required to be returned, a judge of a court of record may order their return.

Two of the sections in this act are particularly pertinent to your inquiry. They are Sections 7 and 9.

Section 7 provides:

> "The sheriff of every county and the chief executive officer of the police department of every city, village and township shall make such reports of accused persons against whom a warrant has been issued and the disposition thereof *in sexually motivated crimes verified as such* and the disposition of cases resulting therefrom to the commissioner as he may require on forms provided by him. The commissioner shall file such reports or copies thereof in *a separate confidential filing system* and such reports shall be available for *examination only by the attorney general, any prosecuting attorney, any court of record, sheriffs, and the chief executive officer of the police department of any city, village or township and their authorized officers and by them held*

[2] Another statute relating to maintenance of crime records was enacted by the legislature as Act 319, P.A. 1968; M.C.L.A. § 28.251 et seq; M.S.A. 1969 Rev. Vol. § 4.469(51) et seq. This act provides for establishment of a uniform crime reporting system and requires local law enforcement officers to forward monthly crime reports to the director of state police on forms prescribed by him. Using these reports, the department is required to prepare a statewide compilation of *statistics* which, in accordance with Sec. 2 thereof "shall be available to any governmental law enforcement agency in the state, the judiciary committees of the Michigan state senate and the Michigan state house of representatives, and the federal bureau of investigation, * * *." These statistics are intended for use in studying the causes, trends and effects of crime in the state.

[3] Sec. 151 of Act 380, P.A. 1965; M.C.L.A. § 16.251; M.S.A. 1969 Rev. Vol. § 3.29(151) and Sec. 2 of Act 59, P.A. 1935, as last amended by Act 68, P.A. 1967, being M.C.L.A. § 28.2; M.S.A. 1969 Rev. Vol. § 4.432.

confidential except for official use. Any person who violates any of the confidential provisions of this section shall be guilty of a misdemeanor punishable by imprisonment in the county jail for not more than 1 year and/or by a fine of not more than $500.00." (emphasis added)

Section 9 provides:

"Every person who has custody or charge of public records or documents, from which information sought in respect to this act can be obtained, shall grant to any person deputed by the director, free access thereto for obtaining such information."

The issue of whether the kinds of police records under discussion are subject to public inspection has been troublesome. On the one hand the members of the press and the public are interested in such matters and seek to have this information accessible to them. On the other hand, public release of information of this nature can, in some circumstances, cause distress and embarrassment to individuals involved without serving any commensurate public need or benefit and can hamper police activities.

An indication of problems associated with this issue appears in a recently published popular work.[4] The author notes:

"Practically every state has a bureau or criminal identification or provides for criminal identification in an existing office such as that of the attorney general. In general the statutes require sheriffs, local police departments and other criminal authorities to report crimes to the state office and at the same time to file identification data such as finger prints, photographs, and measurements. While phraseology differs more or less, the general purport of the laws is that the records shall be subject to the inspection of peace officers of the state, the nation, sister states, and foreign countries for criminal law enforcement purposes only. Sometimes other inspection is expressly forbidden, sometimes not. The subject seems of trifling importance except as the basis for an inference, which seems remote and unwarranted, adverse to inspection of 'police records.' "[5]

In this work reference is made to the withdrawal, upon advice of counsel, of a mandamus proceeding brought by The Peoria Journal in January, 1951, to compel access to local police records. The letter advising withdrawal addressed to Arnold Burnett, Managing Editor, The Peoria (Ill.) Journal, January 18, 1951, states:

"We have concluded from this specific prohibition against disclosure of such records by the State Bureau that it is the public policy of the State of Illinois that such records are not to be made available to public inspection. While a disclosure from his records by the chief of police would not be a misdemeanor, because it is not specifically prohibited, it would, in our opinion, be a violation of the declared

[4] Harold L. Cross, "The People's Right to Know" Columbia University Press (1953).

[5] Ibid, p. 84.

public policy of the State of Illinois, and the police chief could justifiably refuse access to such records on that ground."[6]

The author's rebuttal was terse. He commented, "I dissent from that view, but if it be correct and of general application the situation is grave,"[7] and added:

"The gravity of the situation is highlighted by the fact that almost all, if not absolutely all, other states have set up criminal identification bureaus with more or less similar statutory functions and limitations."[8]

Nevertheless, as stated above, Michigan law on this subject must be guided by our construction of Act 189, P.A. 1925, supra.

In this regard it is first necessary to direct our attention to Section 7 thereof quoted above. It will be noted that this section deals solely with reports concerning persons accused of being involved in "Sexually motivated crimes verified as such" and therefore the criminal penalty imposed by this section may only be invoked against the named officials for violating the confidentiality of such records. I do not view the penalty prescribed in Section 7 as applicable to any other records required to be maintained by Act 289, P.A. 1925, if disclosed.

This point was raised and discussed in O.A.G 1955-1956, Vol. II, page 795, in which the attorney general responded to the question of whether Section 7 records had to be returned to an accused found not guilty. Holding that these records need not be returned, the attorney general noted:

"A reading of § 7 indicates that the report required by the terms of that section is not related to the items of information required under § 3. The language of § 7 does not indicate that matters concerning the report required therein be controlled by the terms of § 3. As further evidence of this fact, § 3 provides that various police agencies forward the items listed therein to the Director of the Bureau of Criminal Identification. Under § 7 the report of a sexually-motivated crime must be forwarded not to the Director of the Bureau of Criminal Identification but, rather, to the Commissioner of State Police. *Regarding the material covered by § 3, there is no requirement that it be kept confidential.* Section 7 provides, however, that the report described therein be filed by the Commissioner in a separate confidential file, and that it be available only to certain public officers and only for their official use. It appears highly unlikely that the confidential provisions of the act would apply to cases where there had been a conviction and where the information would consequently be a matter of public record. Such would be the case if the report could be retained only in cases where the accused had been convicted of the offense. For these reasons it is clear that §§ 3 and 7 relate to matters which are entirely distinct and unrelated, and that the provisions of § 3, relating to return of finger prints, arrest card and description in the event of non-conviction, have no application whatsoever to the confidential report of sexually-motivated crime required by § 7. It should

[6] Ibid, p. 110.
[7] Ibid, p. 110.
[8] Ibid, p. 111.

also be noted that both sections are mandatory in nature and do not attempt to define or limit in any manner the powers of the law enforcement agencies. It is evident that it was not the legislative intent to limit the agencies in the criminal records they may keep but rather to impose on the agencies the absolute duty of keeping those records which are enumerated."[9]

(emphasis added)

Turning to Section 9 quoted above, it will be noted that this section, in positive terms, requires persons having custody or charge of public records or documents from which information sought in respect to the act can be obtained to grant free access to any person deputed by the director to such information.

The phrase "any person deputed by the director" used in Section 9 refers to persons exercising the duties and functions of the director in his name. Although the word "deputed" does not appear to have been judicially defined, numerous decisions have dealt with the term "deputy" and are collected in 12 Words and Phrases "Deputy," p. 295, et seq. Typical of the definitional language used by the courts are the following:

"The word 'deputy' means 'one who acts officially for another;' 'the substitute of an officer, usually a ministerial officer.' "[10]

"A 'deputy' is one appointed to act for another or in another's right and usually vested with the powers and authority of his principal."[11]

"A 'deputy' is one who by appointment exercises an office in another's right, having no interest therein, but doing all things in his principal's name and for whose misconduct the principal is answerable."[12]

Similarly Black's Law Dictionary defines "deputy" to be:

"A substitute; a person duly authorized by an officer to exercise some or all of the functions pertaining to the office, in the place and stead of the latter. One appointed to substitute for another with power to act for him in his name or behalf."

It appears, then, that Section 9 does not require giving access to this information to any person other than those acting with specific authority from the director. On the other hand the statute does not prohibit giving access to other persons since there is no language in the act expressly stating that these criminal records of convicted individuals are subject to any privilege which demands that they be kept confidential, except for records concerning persons accused of sexually motivated crimes. It is therefore my opinion that your office is not prohibited from providing such

[9] OAG 1955-1956, Vol. II, pp. 796, 797.

[10] *State ex rel. Binyon v. Houck,* Ohio, 21 O.C.D. 15, 11 Cir. Ct. R., N.S. 414, 415.

[11] *Appeals of Port Murray Dairy Co.,* 71 A.2d 208, 212, 6 N.J. Super. 285.

[12] *Trammell v. Fidelity & Casualty Co. of New York,* D.C.S.C., 45 F. Supp. 366, 370.

access to representatives of the news media to these records if you are willing to do so.

FRANK J. KELLEY,
Attorney General.

691212.1

TAXATION: Assessment at fifty percent of true cash value. Appeal from individual assessment.

CONSTITUTIONAL LAW: Equalization of assessments.

All individual taxable properties within a district shall be assessed and equalized at fifty percent of their true cash value pursuant to law.

There is no requirement that county and state equalization must result from an actual appraisal of all of the individual properties within the county or state.

The use of a factor to attribute the adjustment in aggregate assessed values resulting from the processes of equalization of individual properties does not contravene Art. IX, § 3, Michigan Constitution of 1963, or any statute.

The legislatively prescribed timetable for individual assessment appeal and for the processes of equalization is valid.

No. 4682. December 12, 1969.

Hon. George Montgomery
House of Representatives
State Capitol
Lansing, Michigan

You have requested my opinion upon five specific questions pertaining to ad valorem taxation, namely:

"1. Does No. 409, PA 1965, mean that the aggregate of taxable properties *must* be assessed at 50% of true cash value and that individual properties within the local assessing district *may* be assessed over 50% of true cash value without violating § 3 of Art. IX, Michigan Constitution of 1963?

"2. Does § 3 of Art. IX, Michigan Constitution of 1963, mean that individual taxable properties (both real and personal) may not be assessed and equalized at more than 50% of their true cash value?

"3. Does § 3 of Art. IX, Michigan Constitution of 1963, permit the assignment of additional 'cash value' by equalization of an assessing district either by the county board of supervisors or by the State Tax Commission without an actual appraisal of each of the individual properties in such district?

"4. Recent property assessment and taxation procedures in certain counties use a 'factor' to generate a uniform across-the-board increase of *every* assessment in a local assessment district. Does the use of this 'factor' violate § 3 of Art. IX, Michigan Constitution of 1963, or state statutes which regulate assessment procedures?