

not to extend the licensing power of townships with respect to businesses beyond those enumerated.

"Expressio unius est exclusio alterius." *Sebewaing Industries, Inc. v. Village of Sebewaing*, 337 Mich. 530, 545 (1953).

In answer to your question, I therefore advise you that an unchartered township is without authority under its statutory regulating power to require all commercial establishments in the township to obtain a license or permit to operate such establishments on a yearly basis. I add, however, the cautionary note that with respect to commercial establishments the operation of which can be officially determined to affect the public health, safety or welfare of the inhabitants of the township, section 1 of the township ordinance act, cited *supra*, will permit such licensing requirement. Similarly, with respect to commercial establishments consisting of an organization of the activities of vendors, hawkers and peddlers, the township may regulate the individual vendor, hawker and peddler by requiring the commercial establishment employing each such operative to obtain licenses or permits for the vending, hawking and peddling activities.

FRANK J. KELLEY,
Attorney General.

720315.1

TAXATION: Homestead Exemption.

The beneficial owner of real property in a "grantorship trust" is entitled to claim the statutory homestead exemption from real estate taxation.

No. 4737

March 15, 1972.

Hon. Edgar A. Geerlings
State Representative
The Capitol
Lansing, Michigan

You have posed a problem as follows: An individual who previously qualified for the homestead exemption from real estate taxation creates an irrevocable inter vivos trust. In order to avoid probate proceedings in the event of the Settlor's death or disability, the Settlor conveys all his assets, including the homestead, to the trustee or trustees of the trust. The Settlor is the sole lifetime beneficiary of the trust and may or may not serve as a co-trustee with another individual or a bank.

You then ask the question, whether a beneficial owner of the *res* in a grantorship trust is an owner within the meaning of the Senior Citizens' Tax Exemption.

A survey of the relevant law bearing on the issue indicates that the answer to the question depends upon the nature of the interest of the beneficiary of the trust. In the trust above mentioned, the purpose was avoidance of probate. For purposes of this opinion, we assume that the trustee had no duties to perform. Such a trust should be characterized as a passive trust.

We now turn to the language of the homestead exemption statute.¹ The provisions of the homestead exemption of persons 65 years of age or over define the word "homestead" to mean any dwelling owned and occupied as a home by the owner thereof. The word "owner" in the statute is expanded to include eligible persons who are purchasing homesteads under mortgages or land contracts. But, an owner of a homestead, if otherwise eligible, is clearly entitled to claim a property tax exemption. Our Court, in explaining the ownership concept, has said in

Kleinert v. Lefkowitz (1935), 271 Mich. 79, 90:

"* * * Premises in which the husband has only an equitable interest may be protected as a homestead though the legal title to the premises is in the wife. [Citation omitted] Instances may be multiplied indefinitely where a special property has been held upon the proof of ownership to entitle its occupant to a homestead exemption. [Citation omitted]"

A person does not have to own property in fee simple to claim a homestead and the word "owner" includes parties who are in possession. The Court said, in

Barnes v. City of Detroit (1967), 379 Mich. 169, 177:

"This Court has many times held that a person does not have to own property in fee simple to claim a homestead. The word 'owner' as used in the law has generally been treated as including all parties who have a claim or interest in the property, although the same might be an undivided one or fall short of an absolute ownership, and possession alone has frequently been held, in reference to personal property, as prima facie evidence of ownership.

"* * * an absolute estate in fee simple is not required, this Court holding that a homestead might be claimed in lands held in common with others."

The question, then, is whether or not the beneficial owner referred to above is an owner within the meaning of the Senior Citizens' Tax Exemption. That question is resolved by an examination of the Michigan uses and trusts statutes. Under the provisions of these statutes a beneficial owner of the *res* in a passive trust is deemed to have legal title. M.C.L.A. 555.1 provides for the abolition of uses and trusts, and requires that every estate and interest in land shall be deemed a legal right, cognizable as such in the courts of law. And, M.C.L.A. 555.3 provides as follows:

"Sec. 3. Every person who, by virtue of any grant, assignment or devise, now is, or hereafter shall be entitled to the actual possession of lands, and the receipt of the rents and profits thereof, in law or in equity shall be deemed to have a legal estate therein, of the same quality and duration, and subject to the same conditions as his beneficial interest."

This statute clearly provides, and the courts have consistently held, that whenever a person is entitled to the actual possession of lands and the

¹ M.C.L.A. 211.7c; M.S.A. § 7.7(4).

receipt of the rents and profits thereof, he is deemed to have the legal estate therein of the same quality and duration as his beneficial interests.

In construing the language of the above quoted statute, our Court said in

Rothschild v. Dickinson (1912), 169 Mich. 200, 207:

"It will thus be seen that in this State passive trusts have been entirely abolished, and where a deed creates them the title passes at once to the beneficiary. [Citations omitted] In every case of a naked trust the statute itself executes the trust and places the legal estate in *cestui que trust*. [Citation omitted] The statute places the entire interest, both legal and equitable, in the one beneficially entitled, or, as the expression goes, executes the use. * * *"

Based upon statute and court decisions, for all practical purposes, the beneficial owner of a *res* in a grantorship trust is the owner of his beneficial interest in the land. In the problem you describe, the beneficiary of the trust has a legal interest in the estate. He is entitled to and does retain possession of the land. He uses the land in whatever manner he chooses, and his legal interest in the land is superior to the interest of a life tenant. We conclude that such a trust beneficiary is entitled to a homestead exemption of real estate taxation within the purview of the Michigan Homestead Exemption Statute.

FRANK J. KELLEY,
Attorney General.

7264103.2

COUNTIES: Ordinances.

FIREARMS: County is without authority to pass a countywide ordinance prohibiting the discharge of firearms anywhere in the county.

No. 4741

April 3, 1972.

Honorable John D. Payant
State Representative
The Capitol
Lansing, Michigan 48901

You have asked whether a county has a right to pass a countywide ordinance prohibiting the discharge of firearms within the county.

The powers of the several boards of county commissioners of counties are set forth at M.C.L.A. 46.11; M.S.A. 5.331. These powers include at subparagraph Thirteenth the power

" . . . To pass such laws, regulations and ordinances relating to purely county affairs as they may see fit, but which shall not be opposed to the general laws of this state and which shall not interfere with the local affairs of any township, incorporated city or village within the limits of such county;"

Article VII, Section 1 of the Michigan Constitution of 1963 provides that each organized county shall be a body corporate with powers and