access must be made. The only harm to the public interest which could occur here would be if we would deny access to the newspaper."

In the *Booth* case, the newspaper sought to compel a probate judge to afford access to a last will and testament.

There is no legislative enactment either requiring libraries to maintain circulation records after books are returned, or providing that such records, if kept, be confidential.

In the *Booth* case, cited *supra*, the court recognized at page 207 that courts may determine to restrict access where reputations may be harmed, or for pastime, whim or fancy. In such cases, a balancing of the public interest with the right of access must be made. From the context, it is clear that the balancing is to be done by a court.

In the present subject area, there is concern for invasion of the right of privacy of library users, even of character assassination by witch hunting.

In the circumstances, and having in mind the lack of clear legislative guidance, I advise you that the protective policy may be adopted. But, I caution that in carrying out the policy, no court-issued subpoena may be disregarded. In case of any doubt, your constituent should seek immediate counsel and have counsel request the court for a protective order.

FRANK J. KELLEY,
Attorney General.

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ADMINISTRATIVE LAW: Legislative standards.

NURSING STATE BOARD OF: Power to reinstate lapsed license.

Provision of statute conferring upon the state board of nursing the power to reinstate a lapsed license upon satisfactory explanation for the failure to renew without prescribed standards for guidance of the state board of nursing is constitutionally invalid.

No. 4745

April 21, 1972.

Alice C. Dorian, R.N.
Administrative Secretary
Board of Nursing
1033 South Washington Avenue
Lansing, Michigan

You have requested my opinion on the constitutionality of certain language appearing in Section 18(3) of the nursing practice act of 1967.[1] Section 18(1) of the act provides for annual licensure and subparagraph (3) thereof further provides as follows:

"A licensee shall show his license when requested. A licensee who allows his license to lapse by failing to renew it may be reinstated

[1] 1967 P.A. 149; M.C.L.A. 338.1168(3); M.S.A. 14.694(18).

by the board *upon satisfactory explanation for the failure to renew* and on payment of the renewal fee of $3.00 and a reinstatement fee of $3.00." (emphasis added)

You therefore have asked:

"Is the requirement of a 'satisfactory explanation for the failure to renew' constitutional?"

It is a well settled tenet of law that the legislature cannot confer arbitrary powers upon administrative agencies.[2] Thus, while the legislature may clothe an administrative body or official with power to determine when and how a law shall be implemented, a statute conferring such powers must prescribe standards for guidance as reasonably precise as the subject matter would permit.

For example, in *Devereaux v. Township Board of Genesee Township,* 211 Mich. 38 (1920), the court had before it a statute[3] that gave township boards

"'* * * the right to revoke any license once granted, or any annual renewal thereof, when it appears to their satisfaction that any billiard or pool room, dance hall, bowling alley, or soft drink emporium is being conducted in such manner as to be inimicable to public morals.'"

The Michigan Supreme Court concluded that this provision was unconstitutional saying:

"And it is urged that under the well known principle that every intendment is to be taken in favor of the constitutionality of legislation, we should, by construction, bring the act in question into harmony with the Constitution so that the legislative intent may be carried out. We find ourselves unable to agree with this contention. The statute in question provides no method for the application for licenses, contains no qualifications which the applicant must possess, provides no standard of fitness, makes no provisions as to the character of the structure or equipment to be used in the business regulated. It, in fact, attempts to confer upon the township board the arbitrary power to grant or refuse a license, according to its whim or caprice. Under all the authorities, we think this cannot be done. *Robison v. Miner,* 68 Mich. 549; *Yick Wo v. Hopkins,* 118 U.S. 356 (6 Sup. Ct. Rep. 1064); *Mayor, etc., of Baltimore v. Radecke,* 49 Md. 217; *Grundling v. City of Chicago,* 177 U.S. 183 (20 Sup. Ct. Rep. 633; *Darling v. City of St. Paul,* 19 Minn. 389. * * *."
(p. 43)

Similarly, in *Hoyt Brothers, Inc., v. City of Grand Rapids,*[4] a charitable solicitation ordinance was struck down by the court for reasons that may be gleaned from the following judicial pronouncement:

"In the instant case the power to issue a permit is vested in the city manager who grants such permit 'whenever it shall appear * * * from such investigation and report (made by a police officer) that the charity is a *worthy one,* and that the person or persons making

[2] *Yick Wo v. Hopkins,* 118 U.S. 356, 30 L. ed. 220 (1886).
[3] 1919 P.A. 97.
[4] 260 Mich. 447 (1932).

> the application are *fit and responsible.*' The ordinance contains no rule or provision by which the city manager is to determine whether the charity is 'worthy' or the applicant is 'fit and responsible.' In making his determination he may apply one or more of a great variety of qualifications which to the city manager may seem proper, or he may grant or refuse the permit solely on captious grounds. And he may apply one test to one applicant and another to another. The ordinance does not contain the slightest indication of the kind or character of charity that is a 'worthy one;' and likewise it is wholly silent as to what type of qualification would constitute an applicant for a permit 'fit and responsible.' We see no escape from the conclusion that the ordinance attempts to vest the city manager with an arbitrary power in the exercise of which he will say to one applicant 'yes,' and to another 'no.' "
> (pp. 451, 452)

Additional recognition of this doctrine may be found in *Blumlo v. Hampton Township Board,*[5] *People v. Riksen,*[6] *Ritter v. Pontiac,*[7] and *O'Brien v. State Highway Commissioner.*[8]

A more recent case, *Chusid v. State Superintendent of Private Employment Bureaus,*[9] involving this issue is particularly pertinent, not only because of judicial application of the rule that declares a vague standard to be unconstitutional, but also because it serves as an illustration of the technique used by the court to excise the repugnant language. In *Chusid* the Court of Appeals first declared that the statutory phrase, "any good sufficient reason within the meaning and purpose of this act for rejecting such application," is a vague standard because it purports to bestow discriminatory power on the state official. Thereafter, following *People v. McCurchy,*[10] the court held that the inclusion of the unconstitutional phrase by the legislature did not render the section unconstitutional but that the repugnant words must be severed from the valid remainder leaving an operable statute.

Applying these principles to the matter at hand, it is my opinion that the standards of Section 18(3) of the nursing practice act which authorizes the board to reinstate a lapsed license "upon satisfactory explanation for the failure to renew" is unconstitutionally vague and that therefore the section should be applied by the board with the offending phrase deleted.

FRANK J. KELLEY,
Attorney General.

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[5] 309 Mich. 452 (1944).
[6] 284 Mich. 284 (1938).
[7] 276 Mich. 416 (1936).
[8] 375 Mich. 545 (1965).
[9] 28 Mich. App. 72, app. den. 384 Mich. 821 (1971).
[10] 249 Mich. 147 (1930).