

inspection. The department contended these were investigatory files compiled for law enforcement purposes.

The argument may be advanced, as it was in *Wellford*, that disclosure will infringe upon a licensee's interest in preserving his reputation. The Michigan legislature, as Congress did, explicitly recognized and provided protection to some privacy interests in adopting the act.

The residential builders, maintenance and alteration contractors law, the real estate brokers and salesmen law, and the public inspection provisions of the administrative procedures act of 1969 express a public policy of disclosure for consumer information purposes as well as a strong support of the public interest in seeing how government agencies are carrying out their responsibilities.<sup>10</sup>

It is therefore my opinion that in light of the express statutory mandates, the policy of disclosure along with the reasoning of the *Wellford* decision, your questions are answered in the affirmative.

FRANK J. KELLEY,  
*Attorney General.*

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**TAXATION: Property, Delinquent:**

To recover delinquent taxes imposed by 1953 P.A. 189, the local treasurer charged with their collection may bring an action against the beneficial user of the property in the name of the units of government for which he collects. Each local unit which is entitled to taxes imposed under 1953 P.A. 189, may institute legal action for the collection of the delinquent taxes against the beneficial user of the property on its own behalf.

The legislature may impose the duty for collection of the entire delinquent taxes imposed under 1953 P.A. 189, either upon the treasurer of the tax-collecting unit or upon the county treasurer.

No. 4746

July 6, 1972.

Hon. Gilbert E. Bursley  
State Senator  
State Capitol Bldg.  
Lansing, Michigan

You request my opinion concerning unpaid and delinquent taxes upon lessees of state-owned property. Specifically, you ask me to identify the gov-

<sup>10</sup> It will be noted that this policy would not apply when a statute prohibits disclosure. Admin. Pro. Act Chapter 2. See: medical research study data, M.C.L.A. 325.131; M.S.A. 14.57(1); information for medical research & education, M.C.L.A. 331.531-3; M.S.A. 14.57(21) (23); categorical & medical assistance records not open to inspection, M.C.L.A. 400.35; M.S.A. 16.435; records concerning applicant or recipient for any form of aid or relief confidential, M.C.L.A. 400.64; M.S.A. 16.464; adoption records not open to public inspection, M.C.L.A. 710.11; M.S.A. 27.3178(551); records of illegitimate births secret, M.C.L.A. 326.16; M.S.A. 14.236; wilful betrayal of professional secret by physician, forfeiture of license, M.C.L.A. 338.53; M.S.A. 14.533; physician-patient information privileged communication, M.C.L.A. 600.2157; M.S.A. 27A.2157.

ernmental unit which is to sue for the delinquent taxes: (1) the county treasurer, (2) the collecting unit, or (3) each of the assessing units for the unpaid taxes due each body.

Insofar as material, § 1(1) of 1953 P.A. 189, as amended<sup>1</sup> provides:

“When any real property which for any reason is exempt from taxation is leased, loaned or otherwise made available to and used by a private individual, association or corporation in connection with a business conducted for profit, except where the use is by way of a concession in or relative to the use of a public airport, park, market, fair-ground or similar property which is available to the use of the general public, the lessees or users thereof shall be subject to taxation in the same amount and to the same extent as though the lessee or user were the owner of such property. \* \* \*”

It is provided in § 2 of 1953 P.A. 189:<sup>2</sup>

“Taxes shall be assessed to such lessees or users of real property and collected in the same manner as taxes assessed to owners of real property, except that such taxes shall not become a lien against the property. When due, such taxes shall constitute a debt due from the lessee or user to the township, city, village, county and school district for which the taxes were assessed and shall be recoverable by direct action of assumpsit.”

The Supreme Court of Michigan in the case of *City of Detroit v. Tygard*, 381 Mich. 271, 273 (1968), dealt specifically with the problem of a suit against a lessee of public property who was delinquent in the payment of taxes. The Court noted:

“\* \* \* we deal with a specific tax which, however, is imposed in the same amount as the *ad valorem* general property tax on similar realty. The remedy for nonpayment of the tax is an action *in personam* against the users. There is no provision in the act for an action *in rem* and lien against the property. \* \* \*”

Although the Supreme Court of Michigan in the *Tygard* case approved the collection of delinquent taxes imposed by 1953 P.A. 189, by the treasurer of the tax-collecting unit, in that case it being the City of Detroit, it did not restrict suit for the delinquent taxes to the treasurer charged with collection of taxes on behalf of the city, county and school district. Section 2 of Act 189, quoted in full above, characterizes taxes due from beneficial users of otherwise exempt real property as “a debt \* \* \* to the township, city, village, county and school district for which the taxes were assessed \* \* \*.” Consonant with principles of law, such “debt” may be sued for by the person or legal entity to which it is owed. Consequently, each governmental unit to whom taxes are due under Act 189 may institute legal action to recover the “debt” which is due them.

The foregoing conclusion may conceivably lead to a multiplicity of suits for taxes imposed by 1953 P.A. 189, against the beneficial users of govern-

<sup>1</sup> M.C.L.A. 211.181; M.S.A. 7.7(5).

<sup>2</sup> M.C.L.A. 211.182; M.S.A. 7.7(6).

ment-owned or otherwise exempt property. Assuming a case of identical posture as *Tygard*, suit to recover delinquent taxes could be brought by the city, as well as the county, as well as the school district, for the share of the total tax which is owed them. Thus, the approach taken in that case—suit by the treasurer of the tax-collecting unit for and on behalf of all local units for which taxes were assessed—may be the preferable of the two permissible approaches.

There exists no constitutional impediment to the enactment of legislation which would impose an affirmative duty upon either the treasurer of the tax-collecting unit or the county treasurer (to whom delinquent taxes are returned) to bring suit for the collection of delinquent taxes under 1953 P.A. 189, in the name of all the local units for which taxes are assessed. In the absence of such legislation, each local unit may be compelled to sue on its own behalf.

FRANK J. KELLEY,  
*Attorney General.*

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**TAXATION: Inheritance—Statutory Construction.**

Life insurance proceeds paid or payable directly to a named beneficiary, other than the insured's estate, his executors, or administrators and their assigns, are excluded from the Michigan inheritance tax base. Such proceeds, when paid or payable to executors or administrators and their assigns, must be included in the tax base. By specific statutory provision, life insurance proceeds payable to trustees for beneficiaries of *inter vivos* or testamentary trusts are excluded from inheritance tax base.

No. 4749

September 11, 1972.

Honorable Raymond L. Baker  
State Representative  
State Capitol  
Lansing, Michigan

By letter of May 3, 1972, you request the Attorney General's opinion upon two questions, the first dealing with the taxability under the Michigan Inheritance Tax Law of life insurance proceeds payable to a testamentary trustee, the second with the amenability of such proceeds to claims of creditors. The first question is capable of precise answer. The second query is not since response thereto would have to be couched in many qualifications and assumptions of fact. Pursuant to verbal communication, you have consented to withdraw the second question.

There remains for consideration the question: are insurance proceeds payable to a testamentary trustee taxable or exempt from Michigan inheritance tax?

The Michigan law providing for taxation of inheritances, being 1899 P.A. 188<sup>1</sup> is a substantial copy of the New York Inheritance Tax Law of 1885,

<sup>1</sup> M.C.L.A. 205.201, et seq.; M.S.A. 7.561 et seq.