

life insurance proceeds payable to trustees for beneficiaries of *inter vivos* or testamentary trusts are excluded from the inheritance tax base.

FRANK J. KELLEY,
Attorney General.

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VETERANS TRUST FUND: Full-time employees occupy positions in the state classified service.

CIVIL SERVICE COMMISSION: Authority to classify positions of full-time employees of Michigan Veterans Trust Fund County Committees.

Full-time employees hired by Michigan Veterans Trust Fund county and district committees occupy positions in the state classified service in view of

1. The control of such committees vested in the state board of trustees.
2. The employees are engaged in furthering through their services a state public program.
3. Their compensation is paid from funds allocated to each committee by the board of trustees.
4. They are named as employees in the service of the state within the meaning of the workmens' compensation law and in the state employees' retirement act.

No. 4752

November 6, 1972.

Mr. Frank A. Schmidt, Jr.
Executive Secretary
Michigan Veterans Trust Fund
Board of Trustees
Stevens T. Mason Building
Lansing, Michigan 48913

You have requested upon behalf of the board of trustees of the Michigan Veterans Trust Fund my opinion as to whether full-time employees of the county and district committees are state employees and the holders of positions within the state classified service and thus subject to the jurisdiction of the Michigan Civil Service Commission as specified by Const 1963, art 11, § 5. The term "county committee" used therein shall refer to both county and district committees. Art 11, § 5, provides in part:

"The classified state civil service shall consist of all positions in the state service except. . . ."

Heretofore such employees have not been considered to be employees of the state. Hence, the Civil Service Commission has never classified such positions. The Michigan Veterans' Trust Fund was created by 1946 P.A. (1st Ex. Sess.) 9, M.C.L.A. 35.601 et seq.; M.S.A. 4.1064(1) et seq. That act transferred to said fund the post-war reserve fund created by 1943 P.A. 4, M.C.L.A. 35.651 et seq.; M.S.A. 3.764 et seq. and stipulated that of the funds so transferred \$50,000,000 was to remain in the fund as a trust. Any income accruing in said fund in excess of the \$50,000,000 was to be

available and disbursed upon requisition of the board of trustees to provide for the needs of Michigan veterans as defined therein. The Michigan Veterans' Trust Fund Board of Trustees was created by § 3 which specifies the respective veteran organizations to be represented upon said board. The members are appointed by the governor upon recommendation of the respective veteran organizations. The board is authorized to employ such assistants and incur such expenses as may be necessary in carrying out the provisions of the act. Said board was transferred by a Type I transfer to the Department of Administration by 1965 P.A. 380, the Executive organization act of 1965, § 106(g), M.C.L.A. 16.206(g); M.S.A. 3.29(106)(g).

As specified by 1946 Ex. Sess. P.A. 4, § 4, M.C.L.A. 35.604; M.S.A. 4.1064(4), the board of trustees is a policy-making body on the state level having the powers and duties therein enumerated. These include:

"The board of trustees shall be a policy-making body, on the state level, and shall have the following powers and duties:

"(a) To determine the purposes for which available moneys in the trust fund in excess of \$50,000,000 are to be allocated to the several veterans' county and district committees;

"(b) To allocate part or all of available moneys in the trust fund in excess of \$50,000,000 to the several veterans' county and district committees, and to disburse said allocations from time to time on the basis of need;

"(c) To prescribe rules governing the granting of assistance to Michigan veterans, their unremarried widows and dependents on the basis of need, including the prescribing of the necessary forms and the making of necessary reports and accounting; for the purposes of the administration of this act dependents shall be considered to be any person legally entitled to look to the veteran for his or her support;

* * *

"(e) To do all acts necessary in carrying out the provisions of this act;

* * **

Section 6 directs:

"The board of trustees shall establish in the several counties of the state representative veteran county committees for the administration of the allocated moneys on the local level, and may combine 2 or more counties into a district when, in the opinion of the board of trustees, a more efficient local administration may result therefrom. . . ."

Each county committee is composed of representatives of the various qualified veterans' organizations. Members of both the board of trustees and the county committees serve without compensation but are entitled to reimbursement for their actual and necessary expenses incurred in the performance of their duties. As specified by § 3:

“ . . . The board is authorized to employ such assistants and incur such expense as shall be necessary in carrying out the provisions of this act.”

Section 8 provides:

“The several county and district committees shall be governed by the rules and regulations of the state board of trustees. The board of trustees, the several veteran county or district committees and the several county treasurers shall be subject to audit by the auditor general in the same manner as provided under the accounting laws of the state for state departments and counties.”

The board of trustees at its April, 1969 meeting determined that the accrual of sick and annual leave by all part-time and full-time employees of veteran trust fund committees would be governed by applicable rules of the State Civil Service Commission. Notice thereof was given to members and employees of each of the committees by Memorandum No. 34. By revised Memorandum No. 26, notice was given to the members and employees of such committees that:

“County Committees shall submit all requests for committee employee needs to the Board of Trustees.

“Notice of employment will include name, type of employment (full-time, part-time, temporary), rate of pay, anticipated date of employment, and reasons for employee hire.

“In no case shall a county committee place an employee on a pay-roll until authority to do so has been issued by the Board of Trustees.

“Personnel employed by County Veterans Trust Fund Committees, whose annual salary is set by a County Committee, rather than a county employees' pay scale or local Civil Service or merit standard system, are required to have all pay increases approved by the Michigan Veterans Trust Fund Board of Trustees before salary increase shall become effective.

“County Veterans Trust Fund Committees contemplating personnel salary increases should make their desires known far enough in advance to give the Michigan Veterans Trust Fund Board of Trustees sufficient time to study the proposals, and if approved, allow for an effective date equitable to all persons concerned.

“All bids for salary increase shall contain sufficient information relative to work load, hours of employment, etc., to justify salary increase.

“In all instances where pay scales are set by a county Civil Service or merit system, County Communities contemplating salary adjustments in line with county Civil Service or merit system adjustments shall secure approval of increase from the Michigan Veterans Trust Fund Board of Trustees prior to putting salary increases into effect.”

O.A.G. 1947-1948, No. 295, p. 287, recognized the authority of the board of trustees as conferred by § 3 to employ assistants and incur expenses in carrying out the provisions of the act but held that members of the county committee could not be compensated for services rendered as an employee of such a committee.

O.A.G. 1947-1948, No. 593, p. 455, held that the board of trustees had authority not only to require a bond covering members of the board and county committees and their employees to safeguard moneys received for the fund but also to effect a blanket bond and charge the proportionate share for the cost thereof to the respective county committees.

I O.A.G. 1955-1956, No. 2383, p. 778, was issued in response to the question:

“Are employees of the Michigan Veterans Trust Fund County Committees, state employees or county employees?”

After referring to the board as “a policy-making body on the state level” vested with authority to

1. Determine the purposes for which available moneys in the fund are to be expended; and
 2. To allocate and disburse available moneys in the fund,
- the Attorney General quoted from § 6 with reference to the authority to establish county committees each of which
1. Is responsible for the local administration and distribution of the fund; and
 2. Select and appoint assistants and employees.

The opinion concluded:

“The county or district committee is responsible for the local administration and distribution of the veterans’ fund. Such activities necessitate office and clerical assistants, which personnel you state is selected and appointed by the respective trust fund committees. O.A.G. 1947-48, page 287.

“Whether the employees to which you refer are state employees within the Veterans’ Trust Fund Act depends upon the measure of control which the Veterans’ Trust Fund Board exercises over such employees and their work. *Buskirk v. Ide*, 302 Mich. 154, 165.

“The decisive test of the employer-employee relationship is not necessarily the source or the manner of payment of wages but who directs the movements of the worker. *Hughes v. Duluth*, 281 N.W. 871, 120 A.L.R. 1144.

“As to the employees in question, it would appear from the facts given that these persons are selected, appointed and their work controlled by the county or district committee. We assume this group of employees are not under state civil service. We conclude, therefore, they are not state employees but are the employees of the respective county or district trust fund committee. We point out further that since the county trust fund committee is not an agent or board of local county government the employees of such trust fund committee are not county employees.”

In II O.A.G. 1955-1956, No. 2445, p. 12, the request noted the provision of the statute authorizing the veteran to appeal to the state board of trustees from determination of the county committee in connection with his request for assistance. The question presented was whether following allowance upon appeal by the state board of the request for assistance the county

committee refused to pay the same, payment could be made direct by the state board and the same charged to future allocations to such county committee. The Attorney General pointed out:

1. The board of trustees is a policy-making body; and
2. "The board of trustees may remove any member of a county or district committee for misfeasance, malfeasance in office, after hearing." (Sec. 6).

He concluded that the refusal of the committee to make payment in accordance with the decision of the board of trustees presented an administrative problem which the board was authorized to resolve but it was not authorized to make payment direct.

II O.A.G. 1955-1956, No. 2476, p. 170, was issued in response to the question as to whether property and equipment purchased by a county committee for use in its office for carrying out its assigned duties with moneys allocated by the board of trustees is the property of the state or county. The opinion noted that funds allocated to such a committee are transmitted to the county treasury and credited to the county veterans trust fund from which they are disbursed by the treasurer upon voucher drawn by the county clerk based upon orders filed by the committee. The board of trustees, the several county committees and county treasurers are subject to state audit. Purchases of permanent equipment initiate with the state board so that the purchase may be made with the benefit of the state discount. The Attorney General concluded that the funds allocated to a county committee and transmitted to the county treasury becomes county funds and property purchased therefrom is the property of the county. Title to property purchased by funds allocated to a district committee is vested in the several counties in proportion to their respective contributions to the purchase price.

As noted *infra*, 1943 P.A. 240, the state employees' retirement act, § 13, M.C.L.A. 38.13; M.S.A. 3.981(13), was amended by 1960 P.A. 156 so as to include

"... any employee of a congressionally chartered veterans' organization who is paid either wholly or in part from a state general fund appropriation, or any employee of the Michigan veterans' trust fund county committees who is employed on a full-time basis by such committees, may become a member by filing a written notice with the retirement board within 1 year of his *employment by the state*, or on or before July 1, 1961, whichever date occurs later. . . ."

[Emphasis added]

Apparently the legislature recognized full-time persons hired by county committees were employed by the state.

In Memorandum Opinion No. M-711 issued January 12, 1961, it was held that members and full-time employees of county committees were state employees within the meaning of the workmens' compensation act. The opinion stated:

"Certain county committees have found it necessary to hire full-time clerical assistance. These full-time county committee employees are hired pursuant to policies established by the State Board of Trustees.

The State Board of Trustees also determines the pay scale and passes upon increases in compensation and promotions of the county committees' employees."

After quoting the pertinent portion of the definition of the term "employee" from § 7 of Part I of that act, M.C.L.A. 411.7; M.S.A. 17.147, the opinion continued;

"This portion of the opinion will discuss the situation of the county trust fund committees' full-time employees. As noted in your letter, Act 156 of the Public Acts of 1960 recognized by specific inclusion that the county trust fund committees' full-time employees are state employees for purposes of the State Employees' Retirement Act. Also, these employees are necessary to the proper administration of the aid to veterans program established by the legislature and financed through state funds. The 'control' of the state over these county trust fund committee full-time employees is traceable through the Governor's and legislature's control over the State Board of Trustees; and in turn, through the State Board of Trustees' control over the county committees and the employees who assist them.

"It follows, therefore, that inasmuch as the legislature has recognized these employees as state employees for purposes of the State Employees' Retirement Act and inasmuch as they are 'controlled' by the state and paid with state funds and are furthering through their service a state public program, that these employees are in the 'service of the state' for purposes of the Workmen's Compensation Act."

To summarize:

1. County and district committees are established "for the administration of allocated moneys on the local level." Sec. 6.
2. As held by II O.A.G. 1955-1956, No. 2445, p. 12, the board of trustees has complete control over the county and district committees by virtue of the following statutory provisions:
 - A. The powers and duties "to do all acts necessary in carrying out the provisions of this act." Sec. 4(e).
 - B. Its authority to appoint members of the county committees and to remove them for misfeasance, malfeasance or non-feasance in office. Sec. 6.
 - C. "The several county and district committees shall be governed by the rules and regulations of the state board of trustees." Sec. 6.
3. The authority of the county committee to employ office and clerical assistants. I O.A.G. 1955-1956, No. 2383, p. 778.
4. Such full-time county committee employees are hired pursuant to policies established by the state board of trustees which also determines the pay scale and passes upon increases in compensation and promotion of such employees. Memorandum Opinion No. M-711.
5. Prior authority from the board is required for the employment by the committee of such personnel. Memorandum No. 26 (Revised).

6. The amount of annual and sick leave to which such employees are entitled is determined by regulations of the board. Memorandum No. 34.
7. Membership in the state employees' retirement system by such full-time employees was authorized by 1943 P.A. 240, § 13, as amended by 1960 P.A. 156.
8. Each person so employed is determined to be an "employee" in "the service of the state" as those terms are used in 1912 P.A. (1st Ex. Sess.) 10, the workmens' compensation law, Part I, § 7, and as such entitled to the benefits of that act.
9. Said employees are furthering through their services a state public program. Memorandum Opinion No. M-711.
10. Their compensation is paid from funds allocated to the county committees by the state board of trustees.

It follows, in my opinion, that such full-time employees of the county and district committees occupy positions in the state classified service subject to the jurisdiction of the State Civil Service Commission. Const. 1963, art. 11, § 5.

To the extent that any prior opinions of this office are inconsistent herewith, such opinions will no longer be followed. These include II O.A.G. 1955-1956, No. 2476, p. 170. As recognized herein, the committees and their employees are engaged in administering a state program which is being financed at state expense. It follows that title to the fixtures and equipment purchased from moneys allocated by the state board for use in the offices of the county and district committees is in the state.

FRANK J. KELLEY,
Attorney General.

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REAL ESTATE: Brokers and Salesmen.

LICENSING AND REGULATION: Real Estate Brokers and Salesmen.

CONSTITUTIONAL LAW: Equal Protection of Laws.

Citizenship requirement as a prerequisite for licensure as a real estate broker or a real estate salesman is unconstitutional.

No. 4754

November 9, 1972.

Charles E. Harmon, Director
Department of Licensing and Regulation
1033 South Washington Avenue
Lansing, Michigan 48926
Dear Mr. Harmon:

You have requested my opinion on the following question:

"Are the requirements of Section 8 of the Michigan Act¹ that a

¹ 1919 P.A. 306, M.C.L.A. 451.201 *et seq.*; M.S.A. 19.791 *et seq.*