> all those provisions which directly relate to, carry out and implement the principal object. . . . [T]he purpose of this constitutional limitation is to insure that both the legislators and the public have proper notice of legislative content and to prevent deceit and subterfuge."

The title of 1973 PA 107 reads as follows:

> "AN ACT to make appropriations for the department of corrections and certain state purposes related to adult corrections for the fiscal year ending June 30, 1974; to provide for the expenditure of such appropriations; and to provide for the disposition of fees and other income received by said state agencies."

Nothing in the title of 1973 PA 107 would even suggest that an office of corrections ombudsman was created. Therefore, I must conclude that 1973 PA 107 embraces more than one object and it contains an object not expressed in its title. It is my opinion that Section 19 of 1973 PA 107 is unconstitutional in that it violates Const 1963, art 4, § 24.

Inasmuch as 1973 PA 107 makes appropriations for the department of corrections, it is clear that said act would have been enacted without Section 19 being made a part thereof. OAG, 1965-1966, No 4,575, p 389 (December 23, 1966). See also: OAG, 1963-1964, No 4,156, p 79 (April 11, 1963). Lacking evidence that the legislature desired 1973 PA 107 to be nonseverable, I would conclude that the remaining provisions of said act were valid.

Having concluded that Section 19 of 1973 PA 107 is unconstitutional, your remaining questions need not be answered.

FRANK J. KELLEY,
Attorney General.

74 0726.1

CONSTITUTIONAL LAW: Title to statute

GUARDIAN: Commissioner of Revenue as public guardian

Statute providing for Commissioner of Revenue to serve ex officio as the public guardian of every patient admitted to mental institution continues to be unconstitutional, although cited subsequent to an earlier determination of unconstitutionality.

Opinion No. 4821 July 26, 1974.

Mr. Sydney D. Goodman
Commissioner of Revenue
Department of Treasury
Treasury Building
Lansing, Michigan 48922

You have requested an opinion as to the constitutionality of 1923 PA 151, § 11b; MCLA 330.21b; MSA 14.811(1).

An opinion of the attorney general concluded:

"In our opinion, Section 11b of Act 299, Public Acts of 1941 is unconstitutional for the reason that the title of Act 299, Public Acts of 1941, *does not and cannot constitutionally include all the provisions contained in Section 11b* and that the appointment of a public guardian under Section 11b with the broad powers therein attempted to be conferred *is not Germane to the subject matter of either the original act or the amended act.*" OAG, 1943-1944, No 0-953, pp 470, 476 (August 2, 1943) [Emphasis supplied.]

Subsequently, a Michigan Supreme Court decision, *Berg* v *Berg,* 336 Mich 284; 57 NW2d 889 (1953), and an opinion of the attorney general, OAG, 1947-1948, No 5,329, p 147 (January 7, 1947), made reference to that section of the act without discussing the constitutionality of the act or mentioning the prior opinion of the attorney general. Specifically, your questions are:

". . . do these later references to CL 1948 § 330.21b affect the original determination of the unconstitutionality of the statute?"

"[What is] the current status of CL 1948 § 330.21b?"

Both the Constitution of 1963 and the Constitution of 1908 provided:

"No law shall embrace more than one object which shall be expressed in its title. . . ." Const 1908, art 5, § 21; Const 1963, art 4, § 24

It is in light of this provision of the Michigan Constitution that section 11b of the act must be viewed.

The history of the act is of some interest: On June 17, 1941, Public Act No. 299 was enacted into law amending the title to add the phrase: "to provide for the collection of fees and expenses for maintenance therein," referring to maintenance costs of mentally diseased, mentally disabled or epileptic persons in institutions and adding section 11b to the act.[1] The source of the grant of power to the Commissioner of Revenue must find its roots within the title because as recently expressed "an act shall not exceed the scope of its title." *Maki* v *City of East Tawas,* 385 Mich 151, 157; 188 NW2d 593, 595 (1971). In 1941, in the title to PA 229, there were only two possible sources for the creation of guardianship power in the Commissioner of Revenue: (1) the phrase "to provide for the collection of fees and expenses for maintenance therein," which was already mentioned, and (2) the phrase "to provide for their care, custody, parole and discharge." In the opinion of the attorney general in 1943, the apparent choice of sources was the first:

"The support of patients in public institutions is, of course, proper and germane to the title of the act. Such authority as some state officer may be vested with to collect the amounts due to the State of

[1] On that same day, 1941 PA 321 was passed, again amending the same title, but not including the phrase mentioned above. Both acts became effective on January 10, 1942. The 1943 opinion of the attorney general in analyzing the constitutionality of § 11b made reference to the title of 1941 PA 299, rather than 1942 PA 321.

> *Michigan is within the title of the act. Authority and power for the appointment of the Director of the Department of Revenue or some other person to act as guardian to provide a method of collection is entirely within the title of this act, if limited to collection purposes. This act, however, goes far beyond effecting collection of the amounts due to the State of Michigan.* The Director of the Department of Revenue is the person designated as public guardian, *not for the sole purpose of effecting collection of monies due the State of Michigan, but to act as general guardian in all matters, with greater powers than a guardian under the Probate Code.* Collection of accounts due the state is the only function of the Department of Revenue (Act 122, Public Acts of 1941). The title of the act organizing it states that, among its purposes, it is established to act as the revenue collecting agency and the fiscal authority of the state. It provides for the transfer to the department of the collection powers and duties of other departments relating to collection of accounts." OAG, 1943-1944, No 0-953, *supra* at p 475 [Emphasis supplied.]

Of the two choices, the first would seem to be the more reasonable. However, the title today does not have such a phrase or any semblance to it. In considering the existing title, two phrases appear as sources of such title authority:

> 1. "to provide for the care by county departments of social welfare of senile persons found not to be psychotic and for the appointment of temporary special guardians for such persons and their estates;"

or the phrase:

> 2. "to provide for their care, treatment, custody, convalescent status and discharge;"

It should be noted that the first title phrase above, identified as 1, was added by the legislature after the enactment of 1923 PA 151, section 11b, *supra,* by 1941 PA 299. Thus, even if favorably construed, it could not have provided notice to the legislature at the time of its enactment of section 11b.

The statute provides, in part, that:

> "Except as is otherwise provided herein the commissioner of revenue shall ex officio be the public guardian *of every patient admitted to an institution* until he is discharged therefrom. . . ." MCLA 330.21b; MSA 14.811 (1) [Emphasis supplied.]

The title limits appointment of guardians for senile persons not found to be psychotic, while the statute provides for the public guardian for "every patient admitted to an institution." The statute is clearly broader in scope than that provision of the title, and in accord with the *Maki* case, *supra,* it is unconstitutional if it must be sustained on that basis. The statute cannot receive so narrow a construction as to redeem its constitutionality consonant with common sense or plain meaning.

The second title phrase we are considering, i.e., "care, treatment, custody, convalescent status and discharge," relates to steps taken subsequent to

the apprehension and admittance of such persons to hospitals. It does not provide for, nor can it reasonably be extended to, the creation of a public guardian for such persons. It is care, treatment and custody in the hospital. "Care" is:

> "A word of most variable meaning, but usually to be interpreted easily in the context. Noun: Custody; safekeeping, charge, . . . support and maintenance, . . . professional attendance, as by a physician or in a hospital, . . ." Ballentine's Law Dictionary (3d ed 1969), p 175

Whereas a guardian is:

> ". . . a trustee of the estate of his ward, bound by law to *manage and conserve* it in a manner most advantageous to the inheritance, . . ." *Reynolds* v *Garber-Buick Co.* 183 Mich 157, 166; 149 NW 985, 988 (1914) [Emphasis supplied.]

First, management of property and affairs, the central aspect of guardianship, is not discussed within the title phrase. Secondly, the hospital being the institution entrusted with the "care" of its ward was not the party in whom guardianship would rest under the statute. Thirdly, the mere use of the word "care" in the title does not put one on notice of the extraordinary powers of guardianship sought to be conferred:

> "The powers of the public guardian under the act in question are extremely broad. The amendment, Section 11b, imposes upon him more powers than a general guardian possesses under the laws of this state. He may exercise all rights in regard to the patient's property that the patient himself could exercise if of full age and sound mind. The public guardian may carry out and complete any previous transaction entered into by the patient before becoming an inmate of an institution. He may carry out any transaction entered into by a general guardian, notwithstanding that the patient may have been discharged or died, and his actions may not be invalidated by subsequent order appointing another guardian. These powers continue, notwithstanding the patient's release on probation. He may continue to act as guardian after death of the ward until the appointment of an administrator or executor and until receiving notice thereof, and may exercise the powers of an executor the same as if he had been named an executor for the purpose of payment of debts and distribution of the residue. His liabilities are limited to those caused by his own wilful misconduct. He shall not only pay for the expenses and maintenance of his ward in the institution to which he has been confined, but he may use his judgment in payment of money to the family of the patient or other persons dependent upon him. His expenses are subject to his own whim. In any legal proceedings brought by or in behalf of a patient, process is required to be served upon him without regard to the effect of the proceedings on the expense of his ward's maintenance in a public institution. Although the public guardian may not have been appointed by the probate court, if he has filed an application for his appointment, his appointment is absolute three months after the patient is committed. The

probate court may only appoint another person as guardian 'for good cause.'" OAG, 1943-1944, No 0-953, pp 470, 475 (August 2, 1943)

Hence, art 4, § 24 has not been observed as to notice of the purpose of the act. *Advisory Opinion re Constitutionality of 1972 PA 294,* 389 Mich 441; 208 NW2d 469 (1973).

As referenced earlier, the basis of your question appears to arise because of a decision of the Supreme Court in *Berg* v *Berg,* 336 Mich 284; 57 NW2d 889 (1953), which cited the statute without discussing its constitutionality, and a subsequent opinion of the attorney general, OAG, 1947-1948, No 5,329, p 147 (January 7, 1947), which in discussing the contractual capacity of those adjudicated insane made reference to the statute without discussing its prior determination of unconstitutionality by the 1943 opinion of the attorney general.

The *Berg* case arose out of a petition by a sister of the defendant in a divorce case to set aside a divorce decree. The defendant had been committed to the Ionia State Hospital for the criminally insane. Petitioner alleged a certain fraudulent concealment of facts concerning property rights by the plaintiff. The lower court denied the petition on the ground that petitioner lacked standing to contest the divorce as she was not a party. The Supreme Court noted that the general rule is that the husband and wife are the only recognized parties in a divorce case. It then proceeded to list numerous exceptions, among them:

> ". . . The prosecuting attorney may be required to appear and oppose a decree in any divorce case in which it appears to the court that public good so requires. CL 1948, § 552.45 (Stat Ann § 25.121). The State commissioner of revenue is *ex officio* the public guardian of every patient committed to a State institution, upon whom service of process is required in any proceeding against any patient detained in a State institution. CL 1948, § 330.21b (Stat Ann 1951 Cum Supp § 14.811[1]). Third persons may be made defendants in an action for divorce where it is charged that such persons have conspired with the husband with intent to defraud the wife out of her interest in property. *Peck v Peck,* 66 Mich 586." *Berg, supra,* 336 Mich at 288; 57 NW2d at 891

In no sense was reference to the statute in question "necessary to support the decision":

> ". . . An expression in an opinion which is not necessary to support the decision reached by the court is dictum or obiter dictum.
>
> " 'Dictum' or 'obiter dictum' is distinguished from the 'holding' of the court in that the so-called 'law of the case' does not extend to mere dicta, and mere dicta are not binding under the doctrine of state decisis." 20 Am Jur 2d, Courts, § 74, p 437

The constitutionality of the statute was not in issue before the court in the *Berg* case. In fact, the briefs of counsel reveal that neither appellant nor appellee cited the act in support of their arguments.

Although the court referred to the statute in *Berg* v *Berg, supra,* it did

not pass upon its constitutionality, and such reference is not a binding interpretation of law, but is mere dicta.

The 1947 opinion of the attorney general did not overrule the 1943 opinion. Although it made reference to 1941 PA 299, § 11b, *supra,* the opinion did not purport to pass upon the constitutionality of the statute and should not be construed as determining that the act is constitutional.

In conclusion, since neither of the latter references to the statute, either by the Supreme Court or by the subsequent opinion of the attorney general, considered the constitutionality of the statute, neither of these latter authorities detracts from the legal effect of the earlier opinion of the attorney general.

Further, since the legislature has known of this determination of unconstitutionality of the statute since 1943 and has taken no steps to remedy the constitutional defects by which the Commissioner of Revenue could discharge that duty, it is clear that 1923 PA 151, § 11b, *supra,* is and remains unconstitutional to the extent of and for the reasons expressed herein and those expressed in OAG, 1943-1944, No 0-953, supra.[2]

FRANK J. KELLEY,
Attorney General.

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CONSTITUTIONAL LAW: Amendments

CONSTITUTIONAL LAW: Initiative

ELECTIONS: Constitutional Amendment

ELECTIONS: Initiative

A statute providing that signatures affixed to petitions proposing a constitutional amendment or initiation of legislation more than 180 days prior to filing are rebuttably presumed to be stale and void is invalid.

Opinion No. 4813 August 13, 1974.

Honorable Gary Byker
State Senator
The Capitol
Lansing, Michigan 48901

You have asked for my opinion concerning the constitutionality of § 472a, as amended, of the Michigan Election Law, MCLA 168.472a; MSA 6.1472(1), which provides that signatures affixed to a petition pro-

[2] This opinion does not consider the possible constitutional defects discussed in OAG, 1943-1944, No 0-953, *supra,* at p 475:

> "*All these extraordinary powers are subject to no control by any court and no notice of any exercise of these powers is provided for. It is probably unconstitutional under the XIVth Amendment of the Constitution of the United States and the Constitution of the State of Michigan.*" [Emphasis supplied.]