affidavit from the licensee in conjunction with the common-law right to change one's name is sufficient legal documentation for the purpose of this rule.

FRANK J. KELLEY,
Attorney General.

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APPROPRIATIONS: To nonexistent entity.

STATE HOUSING DEVELOPMENT AUTHORITY: State funds.

WORDS AND PHRASES: State funds.

An appropriation to a nonexistent entity is invalid and may not be expended.

State funds appropriated to the State Housing Development Authority lose their identity as state funds after being transferred and may not be returned to the general fund by legislative enactment.

Opinion No. 4841 October 24, 1974.

Dr. John D. Dempsey, Director
Department of Management and Budget
Lewis Bass Building
Lansing, Michigan 48913

You have requested my opinion on two questions concerning appropriation bills and implementation thereof.

Your first question asks whether 1974 PA 243, §21 is valid. 1974 PA 243, §21 reads:

> "The sum of $45,300.00 appropriated in this act for the office of legislative corrections officer is for the same office as that created in Senate Bill No. 126 of the 1973-74 regular session of the legislature as the office of corrections ombudsman. The office of corrections ombudsman so created shall be known as, and designated as, the office of legislative corrections and the head of the office shall be designated as the legislative corrections officer with all the powers and duties designated in Senate Bill No. 126."

Senate Bill 126 was an appropriation bill enacted into law as 1973 PA 107. OAG No. 4824 (July 24, 1974) responded to the question of whether the provision in 1973 PA 107 creating the office of legislative corrections ombudsman, was constitutional. Inasmuch as 1973 PA 107 was an appropriations act and did not contain a reference in its title to the creation of such an office as required by Const 1963, art 4, §24, I concluded that the provision which sought to create the office of legislative ombudsman was unconstitutional. In response to your current inquiry regarding the same office, it is necessary to conclude that the appropriations contained in 1974 PA 243, §21, totaling $45,300 for the office of legislative corrections officer, is for an illegally constituted office and, therefore, may not be expended.

Your second question concerns 1974 PA 238, §11 and whether a purported reversion of $1 million to the general fund of the State from the Land Acquisition and Development Fund of the State Housing Development Authority is permissible.

1974 PA 238 is an appropriations act for certain state purposes related to grants, transfers and debt services. Section 11 thereof provides:

> "The reappropriation of $1,150,000.00 from the appropriation from section 8 of Act No. 199 of the Public Acts of 1970, financed from the state housing development authority revolving fund created by Act No. 129 of the Public Acts of 1970, shall be used to establish a community rehabilitation grant and loan fund.
>
> "On June 30, 1974, $1,000,000.00 in the land acquisition and development fund originally appropriated by section 8 of Act No. 199 of the Public Acts of 1970, shall revert to the general fund of the state pursuant to Act No. 95 of the Public Acts of 1965, being sections 21.251 to 21.255 of the Michigan Compiled Laws."

1970 PA 199, referred to above in §11, *supra,* was also an act to make appropriations for certain state purposes related to grants, transfers and debt service for the fiscal year ending June 30, 1971. Section 8 of 1970 PA stated:

> "Two million seven hundred and fifty thousand dollars of the appropriation in section 1 for land and building acquisition shall be used by the state housing development authority to establish a revolving fund for land acquisition, sales, carrying charges and planning."

Section 1 of 1970 PA 199 had theretofore appropriated a total of $3,500,000.00 for communities for land and building acquisition.

In light of the appropriation in 1970 PA 199, §8 to the state housing development authority land and building revolving fund, it becomes necessary to determine whether the legislature may, in a succeeding fiscal year, reappropriate, regrant, or revert funds already received by the state housing development authority as it purported to be done by 1974 PA 238, §11.

In *Advisory Opinion re Constitutionality of PA 1966, No 346,* 380 Mich 554; 158 NW2d 416 (1968), the constitutionality of the enabling legislation of the state housing development authority was reviewed. The Michigan Supreme Court concluded that 1966 PA 346; MCLA 125.1401 *et seq.;* MSA 16.114(1) *et seq.,* was constitutional. The Court determined bonds issued by the authority were not obligations of the State inasmuch as the State could not directly engage in financing and/or constructing private housing.

The Court characterized the authority as a "quasi-corporation" exercising a proper public purpose. When reviewing receipt of appropriations by the authority, the Supreme Court said, after examining §§ 23 and 49 of the act:

> "Moneys of the State housing development authority are not moneys of the State. The funds to be established under the act are trust funds to be administered by the State housing development authority. The State has no beneficial interest in such funds, . . ." [p 583]

It is obvious that the grant made pursuant to 1970 PA 199, §8 caused the funds to lose their state character and become funds of the state housing development authority, a quasi-public corporation. The Michigan Court of Appeals in *Monticello House* v *Calhoun County,* 20 Mich App 169; 173 NW2d 759 (1969), had occasion to examine the question of when state funds lose their identity and become county funds. The Court, in reviewing whether state funds were involved for reimbursing a nursing home caring for patients pursuant to an agreement with the County, said:

> "Plaintiff avers that state funds are not involved since such amounts as are received from the state lose their identity as such when received by the county. They also argue that the county alone is the agency responsible for large capital expenditures of this type, and they are not reimbursed by the state.
>
> "Defendants argue that since plaintiff is a domestic corporation organized for profit, and a sole party plaintiff, it is precluded by the court rule from bringing this type of action to prevent the illegal expenditure of state funds.
>
> "Defendants cite *Pokorny* v. *County of Wayne* (1948), 322 Mich 10, in support of their contention that state funds are involved, *and that public funds are synonymous with state funds. We disagree with this proposition, for the definition of public funds in that case is too general and may or may not specifically include state funds.* Furthermore, there is no express obligation on the part of the county to appropriate and to expand public funds for a medical facility of the type involved in the instant case. We have examined the statutes cited by defendants, and, contrary to their assertions, *the legislation providing for medical facilities is not of a compulsory nature, but is permissive.* MCLA §400.58 (Stat Ann 1968 Rev § 16.458) MCLA § 400.58(c) (Stat Ann 1968 Rev § 16.458[3]).
>
> "In a project of this nature, admittedly there is some state reimbursement. *However, it appears that these funds are actually county moneys.* Although there is no Michigan authority on this point, the Ohio case of *State v. Lucas* (1949), 39 Ohio Op 519 (85 NE2d 155), holds that *state funds appropriated and paid to a county lose their identity as state funds upon being paid to that county.* The reasoning expressed in *Lucas* applies to the situation before us:
>
> " 'Political subdivisions of the state are entitled to a share of many funds collected by the state for express purposes, such as the gasoline fund, auto tax fund, sales tax fund, school fund, and others, all of which by express direction of the law must be used by the counties and other political subdivisions for the purposes provided by statute. It would not be contended that any of such funds, after payment thereof to the political subdivisions, are still state funds, although collected and distributed by the state, although, under the provisions of the various statutes, such funds may only be legally used for specified purposes.' " [Emphasis supplied]

I must conclude the principle stated in the *Monticello* case applies to this attempt of the legislature to reappropriate, transfer, and revert funds

heretofore appropriated in 1970 PA 199; namely, the funds appropriated in 1970 PA 199 have lost their "state" character and are funds solely under the control of the state housing development authority. As mentioned in *Monticello, supra,* the expenditure of the funds in 1970 PA 199, §8 is not compulsory in nature, but rather is permissive. Therefore, no authority exists for the purported reappropriation, transfer, and reversion of funds appropriated by 1970 PA 199, §8. Section 11 of 1974 PA 238, having no basis for implementation thereof, is unconstitutional in that it attempts to control funds no longer subject to the authority of the legislature.

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FRANK J. KELLEY,
Attorney General.

STATE CONSTRUCTION CODE: Authority of a city, village or township to exempt itself from application.

A city, village or township may only elect to exempt itself from the State Construction Code Act and state construction code if the local ordinance adopting a nationally recognized building code is passed within 6 months of the promulgation of the state construction code.

Once a city, village or township has elected to exempt itself from the State Construction Code Act and the state construction code it cannot void that election.

A city, village or township which has elected to exempt itself from the State Construction Code Act and the state construction code is responsible for the administration and enforcement of its codes and would not be entitled to any of the State services provided in the Act.

Opinion No. 4843 October 28, 1974.

Honorable William Faust
State Senator
Capitol Building
Lansing, Michigan

You have requested my opinion with respect to several questions which have arisen concerning the State Construction Code Act (1972 PA 230, as amended by 1974 PA 180).[1] Specifically, you ask:

> "(1) Can a municipality adopt the State Code and, at a later date, choose to exempt itself as provided by the Act?
>
> "(2) Can a municipality choose to exempt itself from the State Code, as provided by the Act, and then at a later date, choose to void its exemption?
>
> "(3) If a municipality choose(s) to exempt itself from the Code, will the municipality receive any of the State services as provided in the Act? (i.e. services of the Attorney General in the case of a suit brought against a municipality for enforcement of its own adopted code.)"

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[1] MCLA 125.1501 *et seq.*; MSA 5.2949(1) *et seq.*