

750604.2

INCOMPATIBILITY OF OFFICE: Husband and Wife.

HUSBAND AND WIFE: Incompatibility of Office.

A married woman may serve as director of a county social services department at the same time that her spouse is county commissioner of the same county in which she serves.

As married women are entitled to own, retain and dispose of their earnings and to make contracts in relation thereto, it is not incompatible for a person to serve as a public officer where his or her spouse holds another public office that would be incompatible if held by the same person.

Opinion No. 4869

June 4, 1975.

Mr. Charles W. Jennings
Ogemaw County Prosecuting Attorney
107 N. 3rd Street
West Branch, Michigan 48661

You have requested my opinion as to whether it is a conflict of interest for an individual to serve as director of a county social services department at the same time that her spouse serves as a county commissioner for the same county.

On February 3, 1975 I addressed a letter involving the same concept to Representative David C. Hollister. In that letter, a copy of which is appended hereto, I expressed my opinion that there is no incompatibility of office or conflict of interest if a person serves on a board of education while his wife is an employee of that board. That opinion cited statutory references and judicial authority in support of its conclusion. As noted, these references indicate that, as married women are entitled to own, retain and dispose of their earnings and to make contracts in relation thereto, it is not incompatible for a person to serve as a public officer where his or her spouse holds another public office that would be incompatible if held by the same person.

Consequently, it is my opinion that a married woman may serve as director of a county social services department while her spouse simultaneously serves as a county commissioner for the same county.

FRANK J. KELLEY,
Attorney General.

February 3, 1975.

Honorable David C. Hollister
Representative, 57th District
House of Representatives
Lansing, Michigan 48901

Dear Representative Hollister:

You have requested my opinion concerning whether there is a conflict of interest if an individual serves on a Board of Education at the same time that his spouse serves as an employee of said Board.

A conflict of interest arises when the personal interest of a public official places him in a position where he cannot execute his public duties without affecting his private interests, thus denying the public the fair, impartial and objective judgment to which it is entitled.

1911 PA 196; MCLA 557.11; MSA 26.171, states:

"Each and every married woman in the state of Michigan shall be absolutely entitled to have, hold, own, retain and enjoy any and all earnings acquired by any such married woman as the result of her personal efforts; and to sell or otherwise dispose of any and all such earnings, and to make contracts in relation thereto to the same extent that any such married woman could have or do if unmarried."

The first of two important cases which relied upon 1911 PA 196, *supra*, was *Thompson v School District No. 1 of Moorland Township*, 252 Mich 629; 233 NW 439 (1930). The issue presented to the court was whether it was against public policy for a husband, who was a school board member, to sign the contract of employment to hire his wife as a teacher in the school district. The court stated:

"Notwithstanding the provision of the school law broadly provides that a school officer shall not 'be personally interested in any way whatever, directly or indirectly' in the contract with the district, we think it is not applicable to the case here presented. Under [1911 PA 196], above quoted, Mr. Spoelman clearly has no financial interest in this contract. Any wages which may be paid Mrs. Spoelman as a teacher will be her individual property the same as though she were an entire stranger to Mr. Spoelman. The statute does not apply to one having only a remote interest which a school officer might have under many and varied circumstances."

[252 Mich 629, 631 (1930)]

The court concluded:

"We are of the opinion that the instant contract should not be held to be in violation of the quoted provision of the school law, nor do we know of any good reason why it should be held to be contrary to public policy. This contract is not of such a nature that it cannot be fulfilled without reaching beyond the parties and working or tending to work an injury to the community at large, hence it is not contrary to public policy."

[252 Mich 629, 632 (1930)]

A second case which based its decision on 1911 PA 196, *supra*, was *Rupert v Van Buren County*, 296 Mich 240; 295 NW 630 (1941). The Court stated:

"It is also urged that it is against public policy for a prosecuting attorney to appoint his wife as stenographer in his official office. One of the reasons urged is that the appointing power may receive some portion of the salary paid to the appointee. In passing upon this question we have in mind . . .

[1911 PA 196]

"Under this section a married woman is entitled to her earnings; and in our opinion the prosecuting attorney's appointment of his wife stenographer in his office violates no theory of public policy."

[296 Mich 240, 242-244 (1941)]

Members of boards of education, like other public servants, are subject to the provisions of 1968 PA 317; MCLA 15.321 *et seq*; MSA 4.1700(51) *et seq*. The effect of 1968 PA 317, is to prevent a public servant from being a party, either directly or indirectly, to any contract between himself and the public entity which he serves. This statute is similar in effect as that relied on by the court in the *Thompson* case, *supra*.

In view of the foregoing, it is my opinion that an individual may serve on a Board of Education while his wife serves as an employee of said Board.

FRANK J. KELLEY,
Attorney General.

7506 05. |—————

STATUTES: Amendments.

CONSTITUTIONAL LAW: Amendment of Statutes.

LICENSING AND REGULATION: Good Moral Character.

The legislative enactment referred to as the good moral character act violates Const 1963, art 4, § 25 in that it attempts to alter or amend various licensing acts without re-enacting and publishing at length those sections which the legislature attempted to amend.

Opinion No. 4868

June 5, 1975.

Ms. Beverly J. Clark, Director
Department of Licensing and Regulation
1033 South Washington Avenue
Lansing, Michigan 48926

You inquired as to the application and constitutionality of the "good moral character" act, 1974 PA 381; MCLA 338.41 *et seq*; MSA 18.1208(1) *et seq*. The title of the act reads as follows:

"AN ACT to encourage and contribute to the rehabilitation of former offenders and to assist them in the assumption of the responsibilities of citizenship and to prescribe the use of the term 'good moral character' or similar term as a requirement for an occupational license, and to provide administrative and judicial procedures to contest licensing agency rulings thereon."

The effect, therefore, would be to redefine some of the terms contained within the existing licensing laws and to revise some of the administrative and judicial procedures contained therein.