"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.

750605.

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
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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.

Specifically you have asked:

> "Does House Bill 5905[1] violate Article IV, Section 36 [25], of the Michigan Constitution in that it defines, in Section 1, the terminology 'good moral character' used in various licensing acts, and thus attempts to amend specific acts?"

Const 1963, art 4, § 25, states as follows:

> "No law shall be revised, altered or amended by reference to its title only. The section or sections of the act altered or amended shall be re-enacted and published at length."

The Michigan Supreme Court in *Alan* v *Wayne County,* 388 Mich 210; 200 NW2d 628 (1972), has interpreted this constitutional provision to hold that when the legislature intends to amend a previous act, it must do so in conformance with the plain and unequivocal requirements of this section.

In *Alan, supra,* the court held that the building authority act, 1948 PA 31; MCLA 123.951 *et seq;* MSA 5.301(1) *et seq,* could not lawfully amend or alter the provisions of the Revenue Bond Act, 1933 PA 94; MCLA 141.101 *et seq;* MSA 5.2731 *et seq,* by creating "exceptions" to it without re-enacting and publishing the section or sections amended.

In following this approach, the court adopted the rule of *Mok* v *The Detroit Building & Savings Association No 4,* 30 Mich 511 (1875), and stated that:

> ". . . you *cannot* amend statute C even by putting in statute B specific words to amend statute C, unless you republish statute C as well as statute B under Const 1963, art 4, § 25." (*Alan, supra,* p 281)

The court further stated:

> ". . . If a bill under consideration is intended whether directly or indirectly to *revise, alter, or amend* the operation of previous statutes, then the constitution, unless and until appropriately amended, requires that the Legislature do in fact which it intends to do by operation." (*Alan, supra,* p 285)

Thus, in conformity with the plain and unequivocal requirements of Const 1963, art 4, § 25, the specific sections to be amended by the terms of the new act must be re-enacted and published just as any other law must be published.

It is argued that it would be unreasonable to require the legislature to re-enact and republish statutes which it intends to amend and the Constitution should not be read to require the doing of what it plainly states on its face. The court answers this objection in *Alan, supra,* by stating that:

> ". . . constitutional duties and requirements may not be avoided on the ground that it might be a lot of work to comply with the constitution. . . ." (p 282)

An act should be a complete act and should not confuse or mislead. The court's reason is that it should not be impossible to find the law. The court

[1] Now 1974 PA 381, *supra.*

noted remarkable advances in printing and copying technology to cope with the problem of republishing these acts.

In *Advisory Opinion re Constitutionality of 1972 PA 294,* 389 Mich 441, 470; 208 NW2d 469, 476 (1973), the court stated in pertinent part:

> ". . . Section 25 is worded to prevent the revising, altering or amending of an act by merely referring to the title of the act and printing the amendatory language then under consideration. If such a revision, alteration or amendment were allowed, the public and the Legislature would not be given notice and would not be able to observe readily the extent and effect of such revision, alteration or amendment."

However, in the above cited advisory opinion, the court stated that the "no-fault" act, 1972 PA 294; MCLA 500.3101 *et seq;* MSA 24.13101 *et seq,* amended the title of The Insurance Code of 1956, 1956 PA 218; MCLA 500.100 *et seq;* MSA 24.1100 *et seq,* added chapter 31 thereto, and falls within the "act complete in itself" exception to Const 1963, art 4, § 25. In *Constitutionality, 1972 PA 294, supra,* the court made reference to *People v Mahaney,* 13 Mich 481 (1865), from which Justice Cooley stated:

> " 'But an act complete in itself is not *within the mischief designed to be remedied by this division and cannot be held to be prohibited by it without violating the plain intent.*' (p 497.) (Emphasis added.)" (p 473)

What *Constitutionality, 1972 PA 294, supra,* and *Mahaney, supra,* are saying is that if an act is complete in itself, it meets the test of constitutionality as applied by Const 1963, art 4, § 25, and therefore it is not required that an existing act be re-enacted and republished.

Constitutionality, 1972 PA 294, supra, is distinguishable from *Alan, supra,* in that the so-called "no-fault" amendment simply modified the title and added a chapter to 1956 PA 218, *supra.* The court in *Constitutionality, 1972 PA 294, supra,* stated that:

> ". . . It is a complete act and does not confuse or mislead, but publishes in one act for all the world to see what it purports to do." (p 476)

The court stated the notice requirement had been met, unlike that in *Alan, supra.*

In reviewing 1974 PA 381, *supra,* it is my opinion that it is not an "act complete in itself" as found in *Constitutionality, 1972 PA 294, supra,* and *Mahaney, supra.* Rather it is an amendatory act which purports to insert certain words regarding "good moral character" into the existing paragraphs of the various licensing acts. It also attempts to amend and revise some statutes in regard to criminal convictions as a sole proof of an applicant's lack of good moral character.

While I approve of the legislative aim of encouraging the rehabilitation of former offenders and assisting them in the assumption of the responsibilities of citizenship, this legislative amendment, without re-enactment and publishing of the sections affected, is misleading as to its effect and

brings confusion as to its application. In order to prevent such confusion, when the legislature desires to amend a particular act it must re-enact and republish those sections which are to be amended in the amended form.

Previous attorney general opinions have ruled on the constitutionally required method of enacting and amending legislation: OAG 1973-1974, No 4801, p . . . (October 9, 1973), and OAG 1973-1974, No 4824, p . . . (July 24, 1974), ruled on the requirements of Const 1963, art 4, § 24, and OAG 1973-74, No 4828, p . . . (November 20, 1974), ruled that the attempted amendment of the Subdivision Control Act, 1967 PA 288; MCLA 560.101 *et seq;* MSA 26.430(101) *et seq,* by reference in the Soil Erosion and Sedimentation Control Act, 1972 PA 347, § 12; MCLA 282.112; MSA 13.1820(12), was violative of Const 1963, art 4, § 25.

After comparing the requirements of Const 1963, art 4, § 25 as interpreted by the court in *Alan, supra,* and *Constitutionality, 1972 PA 294, supra,* and the effect that 1974 PA 381, *supra,* has upon existing licensing laws, it is my opinion that the sections involved of each statute intended to be affected by 1974 PA 381, *supra,* must be re-enacted and published at length.

FRANK J. KELLEY,
Attorney General.