

the terminable interest or within 1 year after the effective date of this act, whichever is later, of a written notice that the owner of such right of termination desires to preserve the same, such notice to be recorded in the register of deeds office of the county where the real property subject to such right of termination is located. Such notice shall be verified by oath, shall describe the land involved and the nature of such right of termination, including the specified contingency, and shall state the name and address of the owner of such right of termination. The recording of such notice shall operate to preserve such right of termination from the operation of this act for a period of 30 years from the date of recording of such notice."

FRANK J. KELLEY,
Attorney General.

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INCOMPATIBILITY OF OFFICE: Sheriff/county political party executive committee treasurer

A county political party executive committee treasurer does not hold a public office; it is therefore not incompatible for a person to simultaneously serve as sheriff and county political party executive committee treasurer.

Opinion No. 4969

March 24, 1976.

Hon. Richard J. Allen
State Senator
Capitol Building
Lansing, Michigan

Hon. Ernest W. Nash
State Representative
Capitol Building
Lansing, Michigan

You have both requested my opinion as to whether it is incompatible for a county sheriff to simultaneously serve as a county political party executive committee treasurer.

Const 1963, art 7, § 6 provides:

"The sheriff may be required by law to renew his security periodically and in default of giving such security, his office shall be vacant. The county shall never be responsible for his acts, except that the board of supervisors may protect him against claims by prisoners for unintentional injuries received while in his custody. He shall not hold any other *office* except in civil defense." [Emphasis added]

In the case of *People v Freedland*, 308 Mich 449; 14 NW2d 62 (1944), the Michigan Supreme Court considered the meaning of the terms "office" and "public office," stating:

"A public office is the right, authority and duty, created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public. The individual so invested is a public officer."

““We apprehend that the term ‘office,’” said the judges of the supreme court of Maine, “implies a delegation of a portion of the sovereign power to, and the possession of it by, the person filling the office; and the exercise of such power within legal limits constitutes the correct discharge of the duties of such office. The power thus delegated and possessed may be a portion belonging sometimes to one of the three great departments and sometimes to another, still it is a legal power which may be rightfully exercised, and in its effects it will bind the rights of others, and be subject to revision and correction only according to the standing laws of the State.””

The New Jersey Supreme Court defined the term “office” in the following manner:

“An office is a place in a government system ‘created or recognized by the law of the state which, either directly or by delegated authority, assigns to the incumbent thereof the continuous performance of certain permanent public duties’; a position is analagous to an office in that the duties that pertain to it are permanent and certain, but it differs from an office ‘in that its duties may be nongovernmental and not assigned to it by any public law of the State’; and an employment differs from both an office and a position ‘in that its duties, which are nongovernmental, are neither certain nor permanent.’” *Fredericks v Board of Health*, 82 N.J.L. 200; 82 A528 (1912)

In *People v Freedland, supra, Kent County Register of Deeds v Kent County Pension Board*, 342 Mich 548; 70 NW2d 765 (1955), *Meiland v Wayne Probate Judge*, 359 Mich 78; 101 NW2d 335 (1960), and *Dearborn Fire Fighters v Dearborn*, 394 Mich 229; 231 NW2d 226 (1975), the Supreme Court of Michigan set forth criteria for determining whether a position constitutes an office as follows:

““After an exhaustive examination of the authorities, we hold that five elements are indispensable in any position of public employment, in order to make it a public office of a civil nature: (1) It must be created by the Constitution or by the legislature or created by a municipality or other body through authority conferred by the legislature; (2) *it must possess a delegation of a portion of the sovereign power of government, to be exercised for the benefit of the public*; (3) the powers conferred, and the duties to be discharged, must be defined, directly or impliedly, by the legislature or through legislative authority; (4) the duties must be performed independently and without control of a superior power other than the law, unless they be those of an inferior or subordinate office, created or authorized by the legislature, and by it placed under the general control of a superior officer or body; (5) it must have been some permanence and continuity, and not be only temporary or occasional.”” [*People v Freedland, supra*, pp 457-458] [Emphasis added]

Although county political party executive committees are established by statute,¹ their powers and duties stem from the political party of which

¹ 1954 PA 116, § 599; MCLA 169.599; MSA 6.1599.

they are associated. Such individuals do not exercise a portion of the sovereign powers of government. It is clear that the position of county political party executive committee treasurer does not satisfy the aforementioned criteria for public office.

It is therefore my opinion that the position of county political party executive committee treasurer is not an "office" as that term is used in Const 1963, art 7, § 6. As such, the office of county sheriff and the position of county political party executive committee treasurer are not incompatible.

FRANK J. KELLEY,
Attorney General.

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CONSTITUTIONAL LAW: Equal Protection

PRIVATE EMPLOYMENT AGENCY: Prohibition against holding a liquor license.

LICENSES AND PERMITS: Equal Protection.

INTOXICATING LIQUORS: Licensees also operating employment agency.

Where a statute prohibits only a private employment agency licensee engaged in the entertainment field from holding a liquor license while permitting persons operating other types of employment bureaus to hold a liquor license, the prohibition provision violates the Equal Protection clauses of US Const, Am XIV and Const 1963, art 1, § 2.

Opinion No. 4930

March 25, 1976.

Ms. Donna Duckworth
Deputy Administrator
Private Employment Bureau
920 South Washington Avenue
Lansing, Michigan 48926

You have asked whether a stockholder in a corporation licensed to sell liquor may hold a class 3 or 4 private employment bureau license. The Private Employment Bureau Licensing Act, 1974 PA 301, § 6(4); MCLA 338.2006; MSA 17.416(6), states:

"A person licensed to sell alcoholic liquor under Act No. 8 of the Public Acts of the Extra Session of 1933, as amended, being sections 436.1 to 436.58 of the Michigan Compiled Laws, may not obtain or renew a class 3 or 4 license under this act."

Class 3 and Class 4 licenses apply to employment bureaus in the entertainment field. 1974 PA 301, *supra*, § 20. The restriction on the obtaining of a class 3 or 4 private employment agency license must be examined in light of the Equal Protection Clauses of US Const, Am XIV and Const 1963, art 1, § 2.