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.

The United States Supreme Court in *Rinaldi* v *Yeager*, 384 US 305, 308-309; 16 L Ed 2d 577, 580; 86 S Ct 1497, 1499-1500 (1966), set forth the principles of equal protection as follows:

> "The Equal Protection Clause requires more of a state law than nondiscriminatory application within the class it establishes. McLaughlin v Florida, 379 US 184, 189-190, 13 L ed 2d 222, 226, 227, 85 S Ct 283. It also imposes a requirement of some rationality in the nature of the class singled out. To be sure, the constitutional demand is not a demand that a statute necessarily apply equally to all persons. 'The Constitution does not require things which are different in fact . . . to be treated in law as though they were the same.' Tigner v Texas, 310 US 141, 147, 84 L ed 1124, 1128, 60 S Ct 879, 130 ALR 1321. Hence, legislation may impose special burdens upon defined classes in order to achieve permissible ends. But the Equal Protection Clause does require that, in defining a class subject to legislation, the distinctions that are drawn have 'some relevance to the purpose for which the classification is made.' Baxstrom v Herold, 383 US 107, 111, 15 L ed 2d 620, 624, 86 S Ct 760; Carrington v Rash, 380 US 89, 93, 13 L ed 2d 675, 678, 85 S Ct 775; Louisville Gas Co. v Coleman, 277 US 32, 37, 72 L ed 770, 773, 48 S Ct 423; Royster Guano Co. v Virginia, 253 US 412, 415, 64 L ed 989, 990, 40 S Ct 560."

Recently the Supreme Court restated the principles of *Rinaldi, supra,* in *Reed* v *Reed,* 404 US 71, 75-76; 30 L Ed 2d 225, 229; 92 S Ct 251, 253 (1971):

> "In applying that clause, this Court has consistently recognized that the Fourteenth Amendment does not deny to States the power to treat different classes of persons in different ways. Barbier v Connolly, 113 US 27, 28 L Ed 923, 5 S Ct 357 (1885); Lindsley v Natural Carbonic Gas Co., 220 US 61, 55 L Ed 369, 31 S Ct 337 (1911); Railway Express Agency v New York, 336 US 106, 93 L Ed 533, 69 S Ct 463 (1949); McDonald v Board of Election Commissioners, 394 US 802, 22 L Ed 2d 739, 89 S Ct 1404 (1969). The Equal Protection Clause of that amendment does, however, deny to States the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute. A classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.' Royster Guano Co. v Virginia, 253 US 412, 415, 64 L Ed 989, 990, 40 S Ct 560 (1920)."

The concept of equal protection, as derived from *Rinaldi, supra,* and *Reed, supra,* was succinctly stated in *Police Dept of City of Chicago* v *Mosley,* 408 US 92, 95; 33 L Ed 2d 212, 216; 92 S Ct 2286, 2290 (1972), where the court stated:

> ". . . As in all equal protection cases, however, the crucial question is whether there is an appropriate governmental interest suitably furthered by the differential treatment. See Reed v Reed, 404 US 71,

> 75-77, 30 L Ed 2d 225, 229, 230, 92 S Ct 251 (1971); Weber v Aetna Casualty Co., 406 US 164, 31 L Ed 2d 768, 92 S Ct 1400 (1972); Dunn v Blumstein, 405 US 330, 335, 31 L Ed 2d 274, 280, 92 S Ct 995 (1972)."

Thus, the courts have consistently held that a statutory classification must be based upon a substantial distinction and must also have a fair and substantial relationship to the object of the legislation.

In *Tomlinson* v *Tomlinson,* 338 Mich 274, 278; 61 NW2d 103, 104 (1943), the Michigan Supreme Court stated:

> "On the narrower phase of the question we merely observe that the guaranty of equal protection of the law is not one of equality of operation or application to all citizens of the State or nation, but rather one of equality of operation or applicability within the particular class affected, which classification must, of course, be reasonable. *Tribbett* v *Village of Marcellus,* 294 Mich 607. . . ."

The Michigan Supreme Court stated in *Kelley* v *Judge of Recorder's Court,* 239 Mich 204, 214; 214 NW 316, 320 (1927):

> ". . . The fundamental rule of classification is that it shall not be arbitrary, must be based on substantial distinctions and be germane to the purpose of the law."

See also, *Godsol* v *Unemployment Compensation Comm,* 302 Mich 652; 5 NW2d 519 (1942), which states that there must be reasonable grounds for a distinction between those who fall in any class and those who do not fall within such class.

1974 PA 301, § 6(4), *supra,* must be analyzed to determine if the classification is reasonable, is based on a substantial distinction, and has a fair and substantial relationship to the object of the legislation. The purpose of 1974 PA 301; MCLA 338.2001 *et seq;* MSA 17.416(1) *et seq,* is to require third persons who are placing employees in employment situations to insure that the employee is dealt with fairly, the fees are properly paid, and actual placement is attempted by the employment agency. Besides the regulation of the conduct of the licensee, 1974 PA 301, *supra,* accomplishes the goal of the legislation through the requirements of bonding and the submission of contracts and forms to the Department of Licensing and Regulation for approval prior to use.

All five classes of licensees are required to meet the same requirements for licensure except that only class 3 and 4 licensees are prevented from also holding liquor licenses. The only distinguishing factor of class 3 and 4 licensees are that they manage or find employment for entertainers. The regulation of the class 3 and 4 licensees does not differ from the other classes. To prevent only class 3 and 4 licensees from holding liquor licenses is an invidious discrimination against those persons and bears no relationship to the goals of 1974 PA 301, *supra.*

The legislature may not accord different treatment to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the object of the statute. Further, the classification must rest upon some

ground of difference having a fair and substantial relationship to the object of the legislation. See *Reed, supra.* In this particular case, the classification is arbitrary, not based on a substantial distinction, and not germane to the purposes of 1974 PA 301, *supra.*

It is my opinion that 1974 PA 301, § 6(4), *supra,* is violative of both the Equal Protection Clauses of US Const, Am XIV and Const 1963, art 1, § 2. Therefore, 1974 PA 301, § 6(4), *supra,* should not be enforced.

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FRANK J. KELLEY,
Attorney General.

LABOR AND EMPLOYMENT: Equal employment opportunity

CIVIL RIGHTS: Sex discrimination in employment

A rule of the Department of Labor prohibiting employment of female minors 16 and 17 years of age in occupations requiring the lifting of more than 35 pounds while allowing the employment of male minors in such occupations is invalid.

Opinion No. 4945 March 25, 1976.

Ms. N. Lorraine Beebe, Chairwoman
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You have requested my opinion as to the effect of an apparent conflict between discrimination guidelines promulgated by the Equal Employment Opportunity Commission (EEOC) and regulations promulgated by the Michigan Department of Labor affecting the employment of female, but not male, minors in occupations which involve the lifting of more than 35 pounds.

Your questions may be restated as follows:

1. Are the federal EEOC guidelines for determining a bona fide occupational qualification applicable to employers with respect to their minor and adult employees?

2. Are the Department of Labor regulations valid despite the fact that they treat employees differently based on their sex and regardless of whether the affected class is composed of adults or of minors?

3. Under the Michigan Department of Labor regulations may an employer hire a minor male or female without testing, via validated testing procedures, whether that individual can lift the maximum allowable weight?

You have also inquired as to the procedures to be utilized to effectuate changes in the regulations of the Department of Labor.

The rule to which you have reference is rule 408.204(15)[1] of the Administrative Code which prevents minors from employment at:

[1] 1969 AACS, R 408.204(15).