

In response to question 1, there are no provisions for the township electorate's involvement in the appointment of either a deputy clerk or a deputy treasurer. However, at the annual meeting, the electors of the township may provide for the appointment by the supervisor of a clerk to assist him in his duties as assessor. MCLA 41.61; MSA 5.52. The compensation of such a clerk is determined by the township board. MCLA 41.61; MSA 5.52.

In response to question 2, the township board may, at its discretion, appoint and compensate up to two subordinate assessors to assist the township supervisor in his capacity as assessor. MCLA 41.61; MSA 5.52, *supra*. The township board may not, however, appoint subordinate assessors to terms which would exceed the supervisor's term of office. It should be noted that both the appointment of the supervisor's clerk, when provided for by the electorate, and of subordinate assessors, when provided for by the township board, are covered in the same section. MCLA 41.61; MSA 5.52, *supra*. This section specifically designates the supervisor as the one to appoint the clerk, whereas the lack of a similar designation in the case of subordinate assessors leads to the conclusion that appointments of subordinate assessors are to be made by the township board. See I OAG, 1957-1958, No 3045, p 344 (July 12, 1957).

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TEACHERS: Tenure

STATE TENURE COMMISSION: Intervention

ADMINISTRATIVE LAW AND PROCEDURE: Disqualification of
presiding officer

The State Tenure Commission has authority to grant intervention by a third party in a case before the Commission.

Presiding officers in contested cases, upon filing in good faith by a party of an affidavit of personal bias or disqualification, must determine the question of disqualification of a presiding officer as part of the record in the case.

Opinion No. 4978

May 28, 1976.

Dr. John W. Porter
Superintendent of Public Instruction
Michigan Department of Education
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You have requested my opinion on the following questions:

"1. Does the State Tenure Commission have the legal authority

to permit the intervention by a third party in a case before the Tenure Commission?

"2. If the answer is in the affirmative, would the membership of any of the State Tenure Commissioners in the same state and national educational association as the party seeking to intervene, serve to disqualify such commissioners from participating in the decision of the Tenure Commission in that case?"

The teachers' tenure act, 1937 (Ex Sess) PA 4; MCLA 39.71 *et seq*; MSA 15.1971 *et seq*, created the State Tenure Commission. Such act contains no express statutory provision concerning intervention.

Hearings before the Tenure Commission are governed by the Administrative Procedures Act, 1969 PA 306; MCLA 24.201 *et seq*; MSA 3.560(101) *et seq*. That statute does not contain any express language dealing with intervention.

However, in Crampton and Holmes, Ed., *The New Michigan Administrative Procedures Act Course Handbook*, p 108 (1970), intervention is discussed as follows:

"Presumably, any necessary party may invoke his right [to participate in a hearing] by means of intervention in the contested case, although no explicit provision is made for it. Beyond that, the agency may, in its discretion, permit other interested persons to intervene. The decision to disallow such permissive intervention is reviewable only for abuse of discretion." (footnotes omitted)

Therefore, it is the opinion of the Attorney General that the State Tenure Commission has the authority to grant intervention by a third party in a case before the Commission. It should be noted, however, that in this context an interested person is someone with more than an indirect, remote or conjectural interest in the proceedings. An interested person, for purposes of intervention, is someone who will be directly affected by the decision in the proceeding in question. Further, persons who do not meet the standards for intervention may be allowed to file *amicus curiae* briefs. *City of Grand Rapids v Consumers Power Co*, 216 Mich 409, 412-415; 185 NW 852, 853-854 (1921).

As to the second question, I invite your attention to 1969 PA 306, § 79, *supra*, which provides:

"Sec. 79. *An agency, 1 or more members of the agency, a person designated by statute or 1 or more hearing officers designated and authorized by the agency to handle contested cases, shall be presiding officers in contested cases. Hearings shall be conducted in an impartial manner. On the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of a presiding officer, the agency shall determine the matter as a part of the record in the case, and its determination shall be subject to judicial review at the conclusion of the proceeding. When a presiding officer is disqualified or it is impracticable for him to continue the hearing, another presiding officer may be assigned to continue with the case*

unless it is shown that substantial prejudice to the party will result therefrom." (emphasis added)

A plain reading of the above quoted statute reveals that any party may file in good faith an affidavit of personal bias or disqualification of any member of the State Tenure Commission. Upon the filing of such an affidavit, it then becomes a matter for determination by the Commission, as part of the record of the case, unless the Commission member in question voluntarily disqualifies himself.

FRANK J. KELLEY,
Attorney General.

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BLUE SHIELD ACT: Payment of non-participating physicians.

Blue Shield of Michigan may not honor assignments of benefits for subscribers to non-participating physicians.

Opinion No. 4859

June 2, 1976.

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Associate Speaker
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You have requested my opinion as to whether Blue Shield of Michigan is required to accept and honor assignment of benefits by its subscribers to non-participating physicians.

Blue Shield of Michigan provides medical services to its subscribers through either a participating or a non-participating physician. I am advised by the Insurance Bureau that approximately 64% of the physicians through whom Blue Shield provides services are participating physicians. Participating physicians contract with Blue Shield to provide medical service to the subscriber at a rate dependent upon the medical procedure involved, prescribed by Blue Shield and such physicians are paid directly by Blue Shield. Non-participating physicians are not required to accept as full payment for their services the rate fixed by Blue Shield and may bill the patient a greater amount; in such cases the patient is reimbursed by Blue Shield for the amount fixed by its rate schedule. The question, therefore, is whether a non-participating physician may, upon assignments from the subscriber, bill Blue Shield directly rather than have Blue Shield pay its portion of the medical fee to the subscriber, leaving the subscriber with the obligation to pay the entire fee to the physician.

Blue Shield is a health service provider rather than an insurer and is exempt from payment of taxes. The statute specifically provides, 1939 PA 108, § 2; MCLA 550.302; MSA 24.592, that the corporation is not an