

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,
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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.

Hon. James E. O'Neill, Jr.
State Representative
85th District
Associate Speaker
State Capitol Building
P. O. Box 119
Lansing, Michigan 48901

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

insurance corporation and is not subject to the laws of this state with respect to insurance corporations. Furthermore, Section 2 states:

“. . . A contract by or on behalf of a non-profit medical care corporation shall not provide for the payment of cash or other material benefit by that corporation to the subscriber or his estate on account of death, illness, or injury, nor be in any way related to the payment of a benefit by any other agency. . . .”

Thus, unlike an insurance company which makes payments to its insureds or their assignees to cover the insureds' liability incurred for medical services, Blue Shield of Michigan provides prepaid services.

In 1963, Insurance Commissioner Sherwood Colburn instituted an action in the Wayne County Circuit Court, Civil Action No. 5945, against Michigan Medical Service (Blue Shield) seeking to prohibit payments to non-participating physicians. As a result of that litigation, a Consent Judgment was entered into on May 15, 1963, which provides in pertinent part as follows:

“G. In lieu of the present M-75 contract, there shall be submitted to the Department of Insurance for approval a new contract to be known as ‘Revised M-75’ or by other appropriate designation. The present M-75 contract shall not continue in effect for more than 60 days after the new contract is introduced. In no event shall the present M-75 contract be continued more than 90 days after the date of this order. The new contract shall contain appropriate provisions for the accomplishment of the following purposes:

“1) The term ‘participating physician’ shall be defined to mean one legally qualified and licensed to practice medicine and perform surgery in the State of Michigan and who has entered into an agreement to provide services to Michigan Blue Shield subscribers under the Blue Shield plan of operation; the term ‘non-participating physician’ to mean one legally qualified and licensed to practice medicine and perform surgery at the time and place services are rendered who has not entered into such an agreement; provided, however, that a physician who shall file a Doctor's Service Report with Michigan Medical Service shall certify thereon that he accepts the scheduled fee as full service benefits to the patient except where the patient is not entitled to such benefits under his certificate; otherwise the scheduled fee will not be paid to the physician by Michigan Medical Service but will be paid to the subscriber.

“2) *Assignments from patient to physician will be expressly prohibited and will not be honored.*” (emphasis added)

The Consent Judgment thus prohibits an assignment of benefits to a non-participating physician. To do otherwise would convert Blue Shield into an insurance company.

Blue Shield enjoys a tax exemption pursuant to 1939 PA 108, § 15; MCLA 550.315; MSA 24.605, which states:

“Each corporation subject to the provisions of this act is hereby declared to be a charitable and benevolent institution, and its funds

and property shall be exempt from taxation by the state, or any political subdivision thereof."

This tax exemption would be jeopardized if Blue Shield were an insurance company rather than a provider of prepaid benefits. See *Associated Hospital Service of Maine v George F. Mahoney, The Health Insurance Association of America, et al*, Intervenors, 1965, 213 A2d 712; 161 Me. 391.

It is therefore my opinion that Blue Shield may not honor an assignment from a patient to a non-participating physician.

FRANK J. KELLEY,
Attorney General.

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COUNTIES: Duty to carry out legislative mandate

Where the legislature imposes a duty upon a county requiring the expenditure of funds, county officials are obligated to carry out the legislative mandate despite the fact that the legislature has failed to appropriate state funds to perform the duties imposed upon the county.

Opinion No. 5023

June 4, 1976.

Hon. Thomas G. Sharpe
State Representative
Capitol Building
Lansing, Michigan

You have asked for my opinion on the following questions:

1. When a county clerk is mandated to perform specific duties as cited in the above-captioned act,¹ is the board of commissioners likewise mandated to provide necessary staff and/or systems and supplies?
2. Does the county clerk make the determination as to the number of persons and training required of staff and also the type and amount of systems and supplies required?

In 20 CJS, Counties, § 62, pp 806, 807, it is stated:

"As counties are but subdivisions of the state created by the legislature for political and civil purposes as agencies of state government . . . they are entirely subject to legislative control except so far as restricted by the Constitution of the State."

This principle governs the consideration of the financial burden a county must bear in fulfilling the responsibility imposed on it by the legislature. A county may not fail to discharge obligations imposed upon it by the

¹ You refer to the Political Reform Act, 1975 PA 227, § 43; MCLA 169.43; MSA 4.1701(43). However, in light of the Supreme Court decision of March 29, 1976 declaring 1975 PA 227 unconstitutional, I am addressing your questions with the broader context of the relationship between the state and the counties.