It is therefore my opinion that, in the absence of any specific prohibition, a sheriff has the authority to allow volunteer inmates to work on public projects.

In regard to your question dealing with liability under the Worker's Disability Compensation Act of 1969, it is clear that a prisoner working on a public project for the benefit of the county is not entitled to recover under the said compensation act. 1969 PA 317 *et seq;* MCLA 418.101 *et seq;* MSA 17.237(101) *et seq.* In OAG, 1958, Vol 2, No 3160, p 1 (January 6, 1958), this office declared:

> "A county is not exposed to liability under the provisions of the Michigan workmen's compensation law for injuries or illness incurred by county prisoners performing lawful labor for the benefit of the county. Section 7 of that act contemplates that a contractual employer-employee relationship must exist if compensation is to be recovered under the statute. No such contractual relationship exists between a prisoner and a county. The servitude of a prisoner is compulsory, not voluntary, and the prisoner cannot be held to be an employee of the county."

The same conclusion was also reached in OAG, 1928-1930, p 135 (October 30, 1928).

Further, in *Prisoners' Labor Union at Marquette* v *Department of Corrections,* 61 Mich App 328, 336; 232 NW2d 699 (1975), the Court stated that the relationship between inmates and the Department of Corrections is not an employment relationship, but rather a custodial, rehabilitative relationship with employment utilized as a means to reach those ends.

It is therefore my opinion that a county is not exposed to liability under the Worker's Disability Compensation Act of 1969 for inmate work-related injury.

FRANK J. KELLEY,
Attorney General.

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PRIVACY: School records

PARENT AND CHILD: Rights of divorced parent without custody to school records of child

A board of education may not refuse to disclose the school records of a child to the child's divorced parent on the ground that the divorced parent does not have custody of the child.

Opinion No. 5027 June 30, 1976.

Honorable Earl E. Nelson
State Senator
The State Capitol
Lansing, Michigan 48901

You have requested my opinion on a question which may be stated as follows:

May a board of education refuse to disclose school records of a child to that child's divorced parent on the grounds that such divorced parent does not have custody of the child?

You have informed me that the school district in question is relying on two statutes for such refusal.

The first is 1961 PA 236, § 2165; MCLA 600.2165; MSA 27A.2165, which states:

> "No teacher, guidance officer, school executive or other professional person engaged in character building in the public schools or in any other educational institution, including any clerical worker of such schools and institutions, who maintains records of students' behavior or who has records in his custody, or who receives in confidence communications from students or other juveniles, shall be allowed in any proceedings, civil or criminal, in any court of this state, to disclose any information obtained by him from the records or such communications; nor to produce records or transcript thereof, except that testimony may be given, with the consent of the person so confiding or to whom the records relate, if the person is 18 years of age or over, or, if the person is a minor, with the consent of his or her parent or legal guardian."

The second is the Family Educational Rights and Privacy Act of 1974, 88 Stat 571 (1974); 20 USCA 1232g.

On the basis of these two statutory provisions the school district has adopted the following policy which it enunciated in a letter to you dated April 5, 1976:

> "At issue would seem to be our interpretation of 'parent'. We define 'parent' or guardian as the person(s) with actual custody of a child. When parents are separated it is our assumption that the parent with whom a child resides has custody of the child. We will not, therefore, release information concerning the child to the other parent without the written consent of the parent assumed to have custody. In the event that the second parent, with whom the child is not living, presents us with a court statement which shows that he has equal custody over the child, we will, of course, release to him any information concerning the child."

As demonstrated below, by any applicable definition of the word, a divorced person continues to be a "parent" of the children of his or her prior marriage.

(1) Dictionary:

> "parent . . . 1. A father or mother."
>
> The American Heritage Dictionary of the English Language (1975 ed.) p 952.

(2) Legal Dictionary:

> "The lawful father or mother of a person . . . . One who procreates, begets, or brings forth offspring. . . ."
>
> Black's Law Dictionary 4th ed, p 1269.

(3) Michigan statutory law:

" 'Parents' means natural parents, if married prior or subsequent to the minor's birth; adopting parents, if the minor has been legally adopted; or the mother, if the minor is illegitimate."

1968 PA 293, § 1 (b); MCLA 722.1(b); MSA 25.244(1) (b).

The United States Supreme Court has determined that a putative father of an illegitimate child is not cut off from his parental rights. *Stanley* v *Illinois,* 405 US 645; 92 S Ct 1208; 31 L Ed 2d 551 (1972). It was stated therein:

"The private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection. . . ."

405 US 645, 651; 92 S Ct 1208, 1212; 31 L Ed 2d 551, 558.

Although the Court was speaking there of the right of a putative father to retain custody of his children, the concept also applies to a divorced person's right to retain certain contacts with his or her children; as here, the right to follow their educational progress.

Having determined that a divorced person is by definition still a "parent", it becomes obvious that the school district's reliance on 1961 PA 236, § 2165, *supra,* is misplaced. It is obvious that the intent of that enactment is to prevent the disclosure of school information to third parties without parental permission. There is no intent there to limit such disclosure to the parents themselves.

Furthermore, any such reading would place the Michigan statutory provision in conflict with the federal statute, the Family Rights and Privacy Act of 1974, *supra,* which directs:

"No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children."

88 Stat 571; § 438(a)(1)(A); 20 USCA 1232g(a)(1)(A)

It is therefore my opinion that neither Michigan law nor federal law supplies grounds for a board of education's refusal to disclose the school records of a child to that child's divorced parent merely because such parent does not have custody of the child.

FRANK J. KELLEY,
Attorney General.