> *limited if the subject matter falls clearly within the educational sphere.* Some conditions of employment may not be subject to collective bargaining because those particular facets of employment would interfere with the autonomy of the Regents . . ." *Regents of the University of Michigan* v *Michigan Employment Relations Commission,* 389 Mich 96, 109; 204 NW2d 218, 224 (1973) [Emphasis added]

Accordingly, even where the Court recognizes the right of student-employees to collectively bargain, this right has been limited to employment matters and the governing board of a university is not required to negotiate with collective bargaining representatives of students as to educational matters.

Nonetheless, students may organize a union or any other lawful association. However, the governing board of the university is under no obligation to recognize and enter into collective bargaining with a student organization under the provisions of the Public Employees Relations Act, *supra.*

As decided by the Michigan Supreme Court in *Regents of the University of Michigan* v *Michigan Employment Relations Commission, supra,* the Public Employees Relations Act, *supra,* governing the relationship between unions and public employers, has no application to relations between student organizations and governing boards. Thus, students who are not employees of a university have no right to intervene in negotiations between a university governing board and employees of a university.

FRANK J. KELLEY,
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760817.1

RESIDENTIAL BUILDERS AND MAINTENANCE AND ALTERATION CONTRACTORS COMMISSION: Suspension or revocation of license for filing in bankruptcy.

LICENSES AND PERMITS: Suspension or revocation for filing in bankruptcy.

BANKRUPTCY: Suspension or revocation of license for filing in bankruptcy.

A statute that provides for suspension or revocation of the license of a person licensed under the Residential Builders and Maintenance and Alteration Contractors Act because the person has filed a bankruptcy petition is unconstitutional.

Licensed builders and contractors are required to maintain a complete and accurate record disclosing their current financial conditions and are further required to submit to the Department of Licensing and Regulation, upon demand by the Department, a current, accurate and sworn statement showing their financial condition.

Opinion No. 5005 August 17, 1976.

Honorable Earl E. Nelson
State Senate
The Capitol
Lansing, Michigan

You have requested my opinion regarding the following question:

> "May the Residential Builders and Maintenance and Alteration Contractors Commission suspend or revoke a builder's license for the mere filing in or an adjudication of bankruptcy?"

The governing statute, 1965 PA 383, MCLA 338.1501 *et seq;* MSA 18.86(101) *et seq,* in section 9 sets forth those acts by a licensee that authorizes the commission to suspend or revoke a license previously issued by it. Included therein are the following provisions:

> "Sec. 9. (1) The commission may, upon its motion or upon the complaint in writing of a person made 18 months after completion, occupancy, or purchase, whichever occurs later, of a residential or a combination of residential and commercial building, investigate the actions of a residential builder, residential maintenance and alteration contractor, salesman, or any person who shall assume to act in such capacity within this state, and shall have the power to suspend or revoke licenses issued under the provisions of this act or deny a pending application at any time where the licensee or applicant is performing or attempting to perform any of the acts mentioned herein:
> "* * *
>
> "(L) Insolvency, filing in bankruptcy, receivership, or assigning for the benefit of creditors."

MCLA 338.1509; MSA 18.86(109)

Thus, from a plain reading of the statute, it is clear that the Legislature has authorized the Commission to suspend or revoke a license for filing in bankruptcy or being adjudicated a bankrupt.

Bankruptcy laws are governed by the Bankruptcy Act, 11 USC 1, *et seq,* and rules promulgated thereunder. Federal responsibility for bankruptcy matters is found at US Const, Art I, § 8(4), which states:

> "The Congress shall have Power . . .
> "* * *
>
> "(4) To establish . . . uniform Laws on the subject of Bankruptcies throughout the United States;"

The purpose of the Bankruptcy Act as enunciated in *Perez* v *Campbell,* 402 US 637, 648; 91 S Ct 1704, 1710; 29 L Ed2d 233, 241 (1971), is:

> ". . . This Court on numerous occasions has stated that '[o]ne of the primary purposes of the Bankruptcy Act' is to give debtors 'a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt.' "

The court went on to set forth a test for examining the validity of a State statute vis-a-vis the Bankruptcy Act, *supra.*

> "[1] Deciding whether a state statute is in conflict with a federal statute and hence invalid under the Supremacy Clause is essentially a two-step process of first ascertaining the construction of the two statutes and then determining the constitutional question whether they are in conflict."

The Supremacy Clause is found at US Const, Art VI, § 2 and states:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Prior to *Perez, supra,* the governing cases in deciding supremacy questions were *Kesler* v *Department of Public Safety,* 369 US 153; 82 S Ct 807; 7 L Ed2d 641 (1962), and *Reitz* v *Mealey,* 314 US 33; 62 S.Ct 24; 86 L Ed 21 (1941), which gave weight to the validity of purpose of the state law as opposed to an attempt by a state to frustrate Federal law.

In *Perez, supra,* the Court rejected this view saying:

> "We can no longer adhere to the aberrational doctrine of *Kesler* and *Reitz* that state law may frustrate the operation of federal law as long as the state legislature in passing its law had some purpose in mind other than one of frustration. Apart from the fact that it is at odds with the approach taken in nearly all our Supremacy Clause cases, such a doctrine would enable state legislatures to nullify nearly all unwanted federal legislation by simply publishing a legislative committee report articulating some state interest or policy—other than frustration of the federal objective—that would be tangentially furthered by the proposed state law. In view of the consequences, we certainly would not apply the *Kesler* doctrine in all Supremacy Clause cases. Although it is possible to argue that *Kesler* and *Reitz* are somehow confined to cases involving either bankruptcy or highway safety, analysis discloses no reason why the States should have broader power to nullify federal law in these fields than in others. Thus, we conclude that *Kesler* and *Reitz* can have no authoritative effect to the extent they are inconsistent with the controlling principle that any state legislation which frustrates the full effectiveness of federal law is rendered invalid by the Supremacy Clause."

Thus, having established that the Builders Act, 1965 PA 383, *supra,* is a valid exercise of the State's Police Power designed to pervasively regulate the profession; it must be determined whether a conflict exists between 1965 PA 383, § 9(1)(L) of the Builders Act, *supra,* and the Bankruptcy Act, *supra.*

In a similar situation, the California Supreme Court, in *Grimes* v *Hoschler,* 12 Cal 3d 305; 525 P2d 65 (1974), determined the bankruptcy section of their builders statute unconstitutional.

The factual context in *Grimes, supra,* dealt with the license being revoked solely because the builder had obtained an adjudication in bankruptcy. The

court determined the California law conflicted with the Bankruptcy Act, *supra*:

> "The effect of the section is unmistakably clear: a licensee is threatened with the loss of his license if his debts incurred as a contractor are discharged for less than their full amount in a bankruptcy proceeding. As a further consequence, the Contractors License Law forbids the reissuance of a revoked license until the amounts of the discharged debts are paid in full. (§ 7102) Hence, the statutory scheme in question frustrates the objectives of Congress in three respects: first, it tends to discourage a licensed contractor from having his business debts discharged in bankruptcy; second, if he adjudicated a bankrupt, either voluntarily or involuntarily, section 7113.5 empowers the board to revoke or suspend his license, thus depriving him of his means of livelihood; and third, section 7102, in effect, compels the disciplined licensee to pay his discharged business debts if he desires to have his license reissued or reinstated. In sum, the relevant sections of the Contractors License Law here under examination not only discourage licensed contractors from voluntarily availing themselves of the beneficent provisions of the Bankruptcy Act but sternly deny a fresh start to all licensees who are adjudicated bankrupts either voluntarily or involuntarily."

Thus, in light of the test laid down by *Perez, supra,* I must conclude that 1965 PA 383, § 9(1)(L), *supra,* is in conflict with the Bankruptcy Act, *supra,* and is unconstitutional.

It should be noted, however, that as a practical matter, the Commission still does have the authority to protect Michigan consumers from licensees who may not be financially sound.

Under Rule 34, 1954 ACS 49, R 338.1534, a builder or contractor is required to keep and maintain a complete and accurate set of books and records disclosing his current financial condition. These books and records are open to inspection by the Department for good and sufficient cause. In addition, Rule 35, 1954 ACS 49, R 338.1535 requires a licensee, after having received demand or notice, to submit to the Department a current, accurate and sworn financial statement showing his present financial condition. The demand may be generated for a number of reasons, including an unsatisfied judgment, a lien filed against the licensee, or the Departmen's reasonable belief that the licensee does not have the ability to perform its obligations.

These disclosure requirements are supplemented by specific prohibitions contained within the 1965 PA 383, as amended, *supra.* Section 9(1) allows the Commission to take disciplinary action against a licensee for, among other matters, diversion of funds or property received for completion of a specific construction project, failure to account for or to remit monies coming into the licensee's possession which belongs to others, or failure to notify the Commission within thirty (30) days of a change of name or principal business location of the licensee.

In conclusion, therefore, in my opinion, 1965 PA 383, § 9(1)(L), *supra*, conflicts with the Bankruptcy Act and is, therefore, unconstitutional.

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760817.2

RECALL: Filling vacancy created by recall.

TOWNSHIP BOARD: Vacancy in office of member of township board.

TOWNSHIP CLERKS: Vacancy in office of township clerk.

Upon recall of a township clerk, the township deputy clerk serves in place of a township clerk. The township deputy clerk serving in place of the township clerk is counted as a member of the township board for the purpose of determining whether there is a quorum to conduct township business.

Where there is a quorum available of a body charged with the responsibility of filling a temporary vacancy created by recall, the governor may not fill the vacancy by appointment.

Opinion No. 5082 August 17, 1976.

Executive Office
The Capitol
Lansing, Michigan 48901

You have requested an opinion concerning the power to fill the position of township clerk following the recall of the previous officeholder. Information supplied with your request and obtained through discussions with members of my staff indicates that the clerk of China Township in St. Clair County has been recalled from office. At the same election, the supervisor and one of the three township trustees were also recalled. Consequently, a quorum of the township board as normally constituted cannot be assembled. The deputy clerk, sitting with the two remaining trustees and the township treasurer would, however, bring the board up to sufficient strength to establish a quorum.

With this factual background in mind, your question may be stated as follows:

> Where a township clerk has been recalled, and other township officials have also been recalled at the same election so that a quorum of the township board as usually constituted cannot be assembled, may the governor appoint persons to temporarily fill the positions rendered vacant by the recall election under the provisions of § 970 of 1954 PA 116, MCLA 168.970; MSA 6.1970, to fill the vacancy?

The statute in question, MCLA 168.970; MSA 6.1970, reads as follows:

> "Upon the filing of the certificate of the canvassing board showing the recall of the officer as herein provided, the officer empowered by