

construction that the expression of one thing implies the exclusion of other things. Numerous decisions of the Supreme Court of Michigan have followed this rule of statutory construction. *Taylor v. Michigan Public Utilities Commission*, 217 Mich. 400, 186 N.W. 485. *Nowack v. Auditor General*, 243 Mich. 200, 219 N.W. 749. *Sebewaing Industries, Inc. v. Village of Sebewaing*, 337 Mich. 530, 60 N.W. (2) 444.

Therefore, it is my opinion that the name of the distributor or sales organization claiming exclusive ownership of a brand name appearing on a label registered in the office of the Secretary of State as a trade-mark need not appear on such label.

It is my further opinion that in the absence of statutory authority the Secretary of State has no authority under the Trade-Mark Act to require that all labels of alcoholic beverages filed in his office show the name of the owner of the brand name of the product as well as the manufacturer's name, if they are different.

FRANK J. KELLEY,
Attorney General.

641006.2

SOCIAL WELFARE: "Convalescent Home," definition of.

No. 4326

October 6, 1964.

The Honorable Kent T. Lundgren
State Senator for the Thirtieth District
Menominee, Michigan

You ask the meaning of the term "convalescent home" as contained in Act No. 202 P.A. 1964, amending Section 28 of the Michigan Social Welfare Act.¹ The 1964 act increases from \$90.00 to \$140.00 the amount of assistance directly payable to old age assistance recipients being cared for in hospitals or convalescent homes. The pertinent language is as follows:

"The amount of assistance shall be fixed with due regard to the condition of the individual and community and the circumstances in each case; but in no month shall the direct payment to the individual exceed \$90.00 except that in the case of hospitalization or care in a *convalescent home* of any recipient of old age assistance, the amount of assistance granted may be in an amount not to exceed \$140.00 per month, for a number of months equal to the number of months during any part of which such care was received." (Emphasis supplied)

The term "convalescent home" is defined by rule of the Social Welfare Commission as follows:

"A convalescent home shall be defined to include: (a) a nursing home licensed by the state department of health; (b) a nursing home

¹ Act No. 280, P.A. 1939, as amended, is the Social Welfare Act, being C.L. 1948 and C.L.S. 1961 §§ 400.1 *et seq.*; M.S.A. Rev. Vol. 1960 and 1963 Cum. Supp. §§ 16.401 *et seq.* Section 28 is C.L.S. 1961 § 400.28; M.S.A. Rev. Vol. 1960 § 16.428 as amended by Act No. 202, P.A. 1964.

other than the client's own home caring for 3 or fewer persons providing adequate nursing or convalescent care as determined by the county bureau of social aid, and (c) a county medical care facility approved by the state department of social welfare."²

Inquiry reveals that the purport of your question is whether the State Department of Social Welfare has legal power to pay the \$140.00 per month to old age assistance recipients living in nursing homes caring for less than four persons, when such home is approved by the State Department of Social Welfare. You pointed out to a member of my staff that the State Health Commissioner licenses only "institutions"—that is, facilities caring for four or more persons—as nursing homes. Thus, you question the legality of paying the \$140.00 upon approval by the State Department of Social Welfare to a person in a home other than an institution licensed as a nursing home by the State Health Commissioner.

Section 26 of the Michigan Social Welfare Act provides in pertinent part as follows:

"Old age assistance shall be given to any person who . . .

"(c) Is not an inmate of any institution: Provided, That old age assistance may be paid to an inmate of an institution under the conditions established in section 42 of this act;

"(g) *Although in need of continual care, is receiving proper care outside an institution as determined by the rules and regulations of the state bureaus*" (Emphasis supplied)³

Section 42 of the Michigan Social Welfare Act permits payment of old age assistance to any person otherwise eligible therefor while such person is a patient in a public medical institution or a private medical, charitable, benevolent or fraternal institution, provided

". . . That the state department of social welfare has approved and that it and its agents are permitted freely to visit and inspect said institution. . . ."⁴

A person in such facility, if otherwise qualified and receiving care approved by the State Department of Social Welfare, may therefore receive up to \$140.00 upon such approval.

It is questionable whether an establishment offering nursing care to less than four persons is an "institution" within the purview of Section 42; however, the language of Sections 26(g) clearly authorizes and, indeed, requires the State Department of Social Welfare to find eligible for old age assistance any person needing continual care who is receiving proper

² 1954 Administrative Code, 1957 Annual Supp. R 400.5 (18). The licensing of nursing homes is provided for in Act 139, P.A. 1956, C.L.S. 1961 §§ 330.651 *et seq.*; M.S.A. 1963 Cum. Supp. §§ 14.1281 *et seq.* These homes are licensed by the State Department of Health. County medical care facility: § 58, 58b of the Michigan Social Welfare Act, Act 280, P.A. 1939, as amended, C.L.S. 1961 § 400.58; M.S.A. 1960 Rev. Vol. § 16.458; C.L.S. 1961 § 400.58b; M.S.A. 1963 Cum. Supp. § 16.458(2).

³ C.L.S. 1961 § 400.26; M.S.A. 1960 Rev. Vol. § 16.426.

⁴ C.L.S. 1961 § 400.42; M.S.A. 1960 Rev. Vol. § 16.442.

care outside an institution as determined by the rules of the bureau. If thus approved by the state, care in a home offering approved care to less than four old age assistance recipients would qualify the clients to receive \$140.00 per month for each month during any portion of which such care was given, as provided by Act 202, P.A. 1964.

I call your attention to the fact that it is the care rather than the home which is approved in this case.

It is therefore my opinion that a home offering care for less than four elderly persons, if such care is approved by the State Department of Social Welfare, is a proper facility for old age assistance recipients, and that such recipients, if otherwise eligible, may receive \$140.00 per month while being cared for in such homes as provided by Act 202, P.A. 1964.

FRANK J. KELLEY,
Attorney General.

641008.1

SOCIAL SECURITY: Court commissioner as officer.

Court commissioners appointed under Act 352, P.A. 1925, to appraise damages to be paid in certain condemnations, cannot be classified as public officers and are thus ineligible for social security coverage.

No. 4370

October 8, 1964.

Mr. Lawrence L. Farrell
Administrator
Social Security Contribution Fund
State Employees' Retirement Board
330 Lewis Cass Building
Lansing, Michigan

Act 205, P.A. 1951, as amended, being C.L.S. 1961 § 38.851 et seq.; M.S.A. 1960 Rev. Vol. § 17.801 et seq., provides for the coverage of certain officers and employees of the State of Michigan and local governments under the old-age and survivors insurance provisions of Title II of the Federal Social Security Act as amended. You have asked whether court commissioners appointed under Act 352, P.A. 1925, to appraise damages to be paid in certain condemnations are public officers and, thus, entitled to social security coverage.

Act 352, P.A. 1925, authorizing the appointment of court commissioners for appraisal purposes is found at C.L. 1948 § 213.171 et seq.; M.S.A. 1958 Rev. Vol. § 8.171 et seq. Section 13 specifies that the court shall appoint three disinterested persons as commissioners when there is to be a hearing on damages. Their duty is to appraise the damages to be paid as compensation for the taking. They shall not be residents of the township where the property is situated. The court shall fix the time of their first meeting and may authorize adjournments. It shall also fix the time for the commissioners to file their report.