ance provisions contained in Section 731 of Act 269, P.A. 1955, as amended, supra, and well within the competence of the legislature to enact. *Messmore v. Kracht* (1912), 172 Mich. 120, 125.

In summary:

1. There can be no doubt that it is the public policy of the state to encourage and provide for sex education within the schools of this state. However, under present laws, sex education classes may not include specific instruction in birth control although they may include other family planning information such as the social, economic, and psychological implications of various sized family units, the effects of population growth upon our natural environment and natural resources, population studies, and birth and death rates.

2. The provision of law requiring that students be excused from sex education classes upon parental request is not in conflict with United States Supreme Court decisions.

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RULES & REGULATIONS: Administrative Agencies—Joint Rules.
HEALTH, DEPARTMENT OF: Public health standards.
LABOR, DEPARTMENT OF: Occupational safety standards commission.
STATE: Administrative Agencies—Rules and Regulations.

Power of department of public health to promulgate rules to protect public health is superior to and precludes exercise of rule-making power in duplicating subject areas by the occupational safety standards commission in the department of labor. But the two agencies should prevent overlapping rules by jointly adopting rules. Dispute as to content, if irreconcilable by the agencies, should be resolved by the Governor.

No. 4697 June 17,1970

Mr. Barry Brown, Director
Department of Labor
7310 Woodward Avenue
Detroit, Michigan

You ask whether the occupational safety standards commission established by Act 282, P.A. 1967,[1] can promulgate rules on health standards, and, if so, whether and to what extent rules adopted by the Michigan department of public health would pre-empt any rules that the occupational safety standards commission may promulgate.

Act 267, P.A. 1967, provides in pertinent part as follows:

> "Sec. 2. Each employer shall establish and maintain conditions of work which are reasonably safe and healthful for employees. Each employer's methods, processes, devices and safeguards, including

[1] M.C.L.A. § 408.851 et seq.; M.S.A. 1968 Rev. Vol. § 17.49(1) et seq.

methods of sanitation and hygiene, shall be such as are reasonably necessary to protect the life, health and safety of the employees."[2]

"Sec. 4. (1) An occupational safety standards commission consisting of 9 members shall be created within the department of labor. . . ."[3]

"Sec. 5. (1) Notwithstanding the provisions of Act No. 88 of the Public Acts of 1943, as amended[4], . . . and subject to Act No. 197 of the Public Acts of 1953, as amended[5] . . . the commission may adopt reasonable safety standards in accordance with the provisions herein provided designed for the prevention of accidents in all places of employment and for the protection of the life, health and safety of employees, and amend or rescind such standards.

"(2) Authority to promulgate safety standards is limited to that not granted to other state departments, other agencies within the department, other legally constituted boards or commissions or the federal government."[6]

The Michigan department of public health is authorized, by Act 146, P.A. 1919, as amended, Section 7, to:

". . . make and declare rules and regulations in accordance with the laws of the state for the proper safeguarding of the public health . . . ."[7]

Among the statutory duties of the department of public health are many relating to health, sanitation and hygiene of employees, including, but not limited to, the following:

Establishment of standards for construction, location, and operation of dry cleaning and dry dyeing establishments and equipment.[8]

Air pollution control.[9]

Licensing of food service establishments and vending machine locations.[10]

Enforcement of acts relating to sewage disposal and waterworks.[11]

Licensing and inspecting trailers and trailer coach parks.[12]

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[2] M.C.L.A. § 408.852; M.S.A. 1968 Rev. Vol. § 17.49(2).

[3] M.C.L.A. § 408.854; M.S.A. 1968 Rev. Vol. § 17.49(4).

[4] M.C.L.A. § 24.71 et seq.; M.S.A. 1970 Cum. Supp. § 3.560(7) et seq. Repealed by Act 306, P.A. 1969, effective July 1, 1970, M.C.L.A. § 24.201 et seq.; M.S.A. 1970 Cum. Supp. § 3.560(101) et seq.

[5] M.C.L.A. § 24.101 et seq.; M.S.A. 1969 Rev. Vol. § 3.560(21.1) et seq. Repealed by Act 306, P.A. 1969, cited *supra.*

[6] M.C.L.A. § 408.855; M.S.A. 1968 Rev. Vol. § 17.49(5).

[7] M.C.L.A. § 325.7; M.S.A. 1969 Rev. Vol. § 14.7.

[8] Act 327, P.A. 1947, as amended, M.C.L.A. § 29.201 et seq.; M.S.A. 1970 Cum. Supp. § 18.577(31) et seq.

[9] M.C.L.A. § 336.11 et seq.; M.S.A. 1969 Rev. Vol. § 14.58(1) et seq.

[10] M.C.L.A. § 325.801 et seq.; M.S.A. 1969 Rev. Vol. § 14.529(1) et seq.

[11] M.C.L.A. § 325.201 et seq.; M.S.A. 1969 Rev. Vol. § 14.411 et seq.

[12] M.C.L.A. § 125.1001 et seq.; M.S.A. 1961 Rev. Vol. and 1970 Cum. Supp. § 5.278(31) et seq.

Licensing construction of, issuing operating permits, inspecting, exercising visitorial and supervisory powers over swimming pools.[13]

Requiring reports, investigating and enforcing statute regarding occupational diseases.[14]

Therefore, it is clear that the rule-making power of the public health department and its director, with respect to health, sanitation and safety of employees precludes the existence of such power in the safety commission, by specific provision of Act 282, P.A. 1967, at Section 5 thereof, as quoted hereinabove.[15]

A state agency or commission may not impose rules in excess of the statutory authority of the commission.[16]

It must follow that the safety standards commission is without power to promulgate rules in any area where that power is conferred upon the department of public health, and that in case of conflicting rules, those of the department of public health would control.

Yet it is equally clear that the legislature intended the two bodies to work together so that the activities of each, including the promulgation of rules, be mutually supplementary and supportive each of the other, for the protection of the working public.

It is therefore recommended that joint rules be promulgated in areas of mutual concern. It is further recommended that the areas of overlapping jurisdiction, if difficult of reconciliation between the two agencies, be resolved by the Governor, since both rule-makers are within the executive branch and under the jurisdiction of the Governor. This would provide a practicable mechanism for achieving a workable system of rules, and avoid the ultimate absurdity of catching a citizen-employer in the cross-fire between two rule-making entities each bent on protecting public health, sanitation and safety.

FRANK J. KELLEY,
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[13] M.C.L.A. § 325.201 et seq.; M.S.A. 1969 Rev. Vol. § 14.447 et seq.

[14] M.C.L.A. § 419.1 et seq.; M.S.A. 1968 Rev. Vol. § 17.431 et seq.

[15] Page 2, *supra.*

[16] *Acorn Iron Works v. State Board of Tax Administration* (1940), 295 Mich. 143.