ment-owned or otherwise exempt property. Assuming a case of identical posture as *Tygard,* suit to recover delinquent taxes could be brought by the city, as well as the county, as well as the school district, for the share of the total tax which is owed them. Thus, the approach taken in that case—suit by the treasurer of the tax-collecting unit for and on behalf of all local units for which taxes were assessed—may be the preferable of the two permissible approaches.

There exists no constitutional impediment to the enactment of legislation which would impose an affirmative duty upon either the treasurer of the tax-collecting unit or the county treasurer (to whom delinquent taxes are returned) to bring suit for the collection of delinquent taxes under 1953 P.A. 189, in the name of all the local units for which taxes are assessed. In the absence of such legislation, each local unit may be compelled to sue on its own behalf.

FRANK J. KELLEY,
Attorney General.

720911.2

TAXATION: Inheritance—Statutory Construction.

Life insurance proceeds paid or payable directly to a named beneficiary, other than the insured's estate, his executors, or administrators and their assigns, are excluded from the Michigan inheritance tax base. Such proceeds, when paid or payable to executors or administrators and their assigns, must be included in the tax base. By specific statutory provision, life insurance proceeds payable to trustees for beneficiaries of *inter vivos* or testamentary trusts are excluded from inheritance tax base.

No. 4749 September 11, 1972.

Honorable Raymond L. Baker
State Representative
State Capitol
Lansing, Michigan

By letter of May 3, 1972, you request the Attorney General's opinion upon two questions, the first dealing with the taxability under the Michigan Inheritance Tax Law of life insurance proceeds payable to a testamentary trustee, the second with the amenability of such proceeds to claims of creditors. The first question is capable of precise answer. The second query is not since response thereto would have to be couched in many qualifications and assumptions of fact. Pursuant to verbal communication, you have consented to withdraw the second question.

There remains for consideration the question: are insurance proceeds payable to a testamentary trustee taxable or exempt from Michigan inheritance tax?

The Michigan law providing for taxation of inheritances, being 1899 P.A. 188[1] is a substantial copy of the New York Inheritance Tax Law of 1885,

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[1] M.C.L.A. 205.201, et seq.; M.S.A. 7.561 et seq.

which was displaced in the year 1930 by an estate tax modeled after the federal estate tax of 1926. Michigan's adoption of the New York statute was accompanied by a general acceptance of the New York judiciary's interpretation of the various statutory provisions.

Stellwagen v. Wayne Probate Judge, 130 Mich. 166 (1902);
In re Stanton's Estate, 142 Mich. 491 (1905);
In re Cox' Estate, 284 Mich. 628 (1938);
In re Rackham's Estate, 329 Mich. 493 (1951).

From its inception, the New York Inheritance Tax Law was construed to exempt from taxation life insurance proceeds which were payable to named beneficiaries.

Matter of Voorhees' Estate, 193 N.Y.S. 168 (1922);
Matter of Parson's Estate, 102 N.Y.S. 168 (1907);
Matter of Elting, 140 N.Y.S. 238 (1912).

It also was held that the proceeds of a life insurance policy made payable to the insured's estate or to his executors, administrators or assigns, were subject to the inheritance tax.

Matter of Knoedler, 140 N.Y. 377 (1893).

In 1929, a New York court decided that life insurance proceeds payable to the trustees of an *inter vivos* trust were not subject to inheritance tax under the New York statute. Moreover, the opinion did not distinguish between *inter vivos* and testamentary trusts.

In re Headrich's Estate, 236 N.Y.S. 395 (1929).

The decision received wide acceptance, but it was in partial conflict with a 1924 Opinion of the Michigan Attorney General. Our Attorney General, Andrew Dougherty, had previously ruled that proceeds of a life insurance policy payable to a trustee were taxable under the Michigan Inheritance Tax Law. O.A.G., 1923-24, p. 357 (June 18, 1924).

His Opinion has particular significance for the question at issue herein because the issue of whether there should be a different rule for the taxation of testamentary trusts was directly addressed by Mr. Dougherty. His unequivocal ruling was one from which succeeding Attorneys General have never deviated in three different opinions. See O.A.G. 1941-42, No. 22746, p. 503; O.A.G. 1939-40, p. 165 (July 18, 1939); O.A.G. 1937-38, p. 519 (October 11, 1938). Attorney General Dougherty ruled that there should be no differentiation for taxation purposes between testamentary and *inter vivos* trusts.

Dougherty's 1924 Opinion was reaffirmed without qualification by Attorneys General Starr and Read in 1938 and 1939 respectively. But the Michigan Legislature was dissatisfied with the result in the Opinions and consequently in 1941 amended the Inheritance Tax Law to exempt proceeds

of life insurance "passing to a trustee or trustees of any trust agreement or trust deed." 1941 P.A. 302; see O.A.G. 1941-42, No. 22746, p. 503.

It is of particular importance to be fully cognizant of the significance of the context of this legislative amendment. *Evanston Y.M.C.A. v. Tax Commission,* 369 Mich. 1 (1962). Never before had any differentiation been made for taxation purposes between testamentary and *inter vivos* trusts. In reversing the controlling rulings of the Attorneys General, the Legislature could therefore have reasonably believed it unnecessary to differentiate and specify the exemption of both *inter vivos* and testamentary trusts. Indeed, had the legislature intended not to exempt testamentary trusts, use of general amendatory terms would have been reckless in this context. Deliberate use of the language "any trust agreement or trust deed" therefore manifests an intent of the Legislature generally to exempt both testamentary and *inter vivos* trust arrangements.

Moreover, the statutory language itself does not admit of a "strict" construction exempting only *inter vivos* trust arrangements. See *Evanston, supra.* The statute generally exempts "property passing to a trustee or trustees of *any* trust agreement *or trust deed.*" While the term "trust *agreement*" arguably implies an *inter vivos* arrangement, the equally exemptive term "trust deed" has a generic connotation inclusive of all trust arrangements. Also, the word "any" is highly inclusive. The method of investing the deed of trust in the trustee is irrelevant for purposes of the statute. The fact that the trustee legally holds any deed of trust is sufficient to exempt the life insurance proceeds passing to the trust. Therefore, creation of a trust by will does not preclude exemption.

Furthermore, if a differentiation were made between *inter vivos* and testamentary trusts, it would constitute mere formalism. Since there is no reason related to tax purposes for a differentiation, it would be a mere technicality, a trap for the unwary. Of course, clever counsel could easily obviate the differentiation by merely drafting an instrument, separate from the will, to create the trust. A "strict" interpretation of the statutory language which would permit such practices violates the rule established in *In re Brackett Estate,* 343 Mich. 195, 205 (1955), that "in any question of statutory interpretation, * * * the taxing statute must receive a practical construction." A statute does not operate in a "practical" manner if it is so easily obviated by such subterfuge.

Finally, it is worthy of note that other states which previously had differentiated in their statutes between *inter vivos* and testamentary trusts, now have ceased to differentiate. Thus, the legislatures of Ohio and Pennsylvania have both recognized the speciousness of the reasoning creating the differentiation and have repealed their illogical statutes. See Ohio Rev. Code Ann. 5731,12; 72 Pa Stat. 2485-303.

To summarize, life insurance proceeds paid or payable directly to a named beneficiary, other than the insured's estate, his executors or administrators and their assigns, are excluded from the Michigan inheritance tax base. Such proceeds, when paid or payable to executors or administrators and their assigns, must be included in the tax base. By specific statutory provision,

life insurance proceeds payable to trustees for beneficiaries of *inter vivos* or testamentary trusts are excluded from the inheritance tax base.

FRANK J. KELLEY,
Attorney General.

721106.3

VETERANS TRUST FUND: Full-time employees occupy positions in the state classified service.

CIVIL SERVICE COMMISSION: Authority to classify positions of full-time employees of Michigan Veterans Trust Fund County Committees.

Full-time employees hired by Michigan Veterans Trust Fund county and district committees occupy positions in the state classified service in view of

1. **The control of such committees vested in the state board of trustees.**
2. **The employees are engaged in furthering through their services a state public program.**
3. **Their compensation is paid from funds allocated to each committee by the board of trustees.**
4. **They are named as employees in the service of the state within the meaning of the workmens' compensation law and in the state employees' retirement act.**

No. 4752 November 6, 1972.

Mr. Frank A. Schmidt, Jr.
Executive Secretary
Michigan Veterans Trust Fund
Board of Trustees
Stevens T. Mason Building
Lansing, Michigan 48913

You have requested upon behalf of the board of trustees of the Michigan Veterans Trust Fund my opinion as to whether full-time employees of the county and district committees are state employees and the holders of positions within the state classified service and thus subject to the jurisdiction of the Michigan Civil Service Commission as specified by Const 1963, art 11, § 5. The term "county committee" used therein shall refer to both county and district committees. Art 11, § 5, provides in part:

> "The classified state civil service shall consist of all positions in the state service except. . . ."

Heretofore such employees have not been considered to be employees of the state. Hence, the Civil Service Commission has never classified such positions. The Michigan Veterans' Trust Fund was created by 1946 P.A. (1st Ex. Sess.) 9, M.C.L.A. 35.601 et seg.; M.S.A. 4.1064(1) et seq. That act transferred to said fund the post-war reserve fund created by 1943 P.A. 4, M.C.L.A. 35.651 et seq.; M.S.A. 3.764 et seq. and stipulated that of the funds so transferred $50,000,000 was to remain in the fund as a trust. Any income accruing in said fund in excess of the $50,000,000 was to be