

shall deem necessary and proper in all matters not especially provided for in this act or in some law of this state:”

[MCLA 46.11; MSA 5.331]

The rules and regulations enacted by the board of commissioners pursuant to § 11 are binding upon the board. Therefore, the action of the Chairman of the Board of Commissioners of Macomb County in appointing an ad hoc retirement committee without the approval of the full board of commissioners, when their by-laws require *any* appointment of the chairman to be subject to approval of the full board would be in derogation of the requirement and the establishment of the ad hoc retirement committee would be null and void. Unilateral appointment by the chairman could be permissible if the by-laws were appropriately amended by the Macomb County Board of Commissioners. Without such amendment, the chairman's actions to appoint must be in accord with the current by-laws.

Your third question is still under consideration and a second opinion will be forthcoming.

FRANK J. KELLEY,
Attorney General.

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LAW EXAMINERS, BOARD OF: Affidavit of Personal History—conviction of crime

CRIMINAL LAW: Conviction of a crime
Setting aside of conviction of a crime of a minor
Status of Youthful Trainee

Person convicted of a crime must answer in the affirmative question of the Board of Law Examiners in Affidavit of Personal History relating thereto even though subsequent court proceedings resulted in a reversal of the conviction. Person may explain subsequent court reversal of conviction in affidavit.

A person whose conviction as a minor has been set aside in conformity with 1965 P.A. 213 is deemed by law not to have been previously convicted so he may answer such question of Board of Law Examiners in the negative.

Person with status of a youthful trainee pursuant to 1966 P.A. 301 is not deemed to be convicted of a crime so that he may answer such question of Board of Law Examiners in the negative.

Opinion No. 4774

June 15, 1973.

Honorable Jack Faxon
State Senator
The Capitol
Lansing, Michigan

You have requested my opinion on the following matter:

Question 28d of the "Affidavit of Personal History" requires applicants for the Michigan Bar Examination to answer the following question:

"Have you ever been . . . convicted of a crime (traffic violations payable by fine without court appearance excluded; however, include drunk, reckless or felonious driving)?"

Also, a candidate for the bar examination is required to respond to the following statement:

"I have never been convicted or pleaded guilty to any offense under the laws of any state or territory of the United States, or of the District of Columbia, or of any foreign country, except as follows:"

Can an applicant for admission to the Michigan Bar answer these questions in good faith in the negative even though the applicant falls within any of the following categories? (1) where one, who has been previously convicted or who has pleaded guilty, is granted a new trial in which charges against him are dismissed, (2) where a minor, who has been previously convicted, has had his record expunged in compliance with the statutory enactment, catch-lined as "Setting Aside Conviction of Minor" MCLA 780.621-622; MSA 28.1274 (101)-(102) and (3) where a minor is assigned the status of "youthful trainee" in compliance with the "Holmes youthful trainee act" and is subsequently released from such status (without a later conviction) MCLA 762.11-16; MSA 28.853 (11)-(16).

Under section 922 *et seq* of the Revised Judicature Act,¹ the Board of Law Examiners is charged with responsibility to determine whether a person is "of good moral character" (MCLA 600.934; MSA 27A.934). In order to perform this responsibility the board is given "the power of subpoena, and the authority to administer oaths, and to take testimony under oath, . . . in cases of applicants for admission to the bar" (MCLA 600.925; MSA 27A.925).

In these provisions the legislature has seen fit to grant the Board of Law Examiners the widest possible authority to make any inquiry relevant to the character and fitness of an applicant for admission to the bar. We cannot say that information concerning any of the three hypothetical circumstances which you describe could be fairly characterized as irrelevant to an inquiry into the "moral character" of the applicant and thus we must conclude that the Board of Law Examiners could by proper questions inquire into any of these matters.

This, however, does not provide a complete answer to your question since you have inquired with reference to the specific language currently in use by the board. The answer to your questions turns on the legal meaning of the word "conviction" since that is the word which the board has chosen to use in this context. In Michigan:

" "The ordinary legal meaning of 'conviction,' when used to designate a particular stage of a criminal prosecution triable by a jury, is the confession of the accused in open court, or the verdict returned against him by the jury, which ascertains and publishes the fact of his guilt; while 'judgment' or 'sentence' is the appropriate word to denote the action of the court before which the trial is had, declaring the consequences to the convict of the fact thus ascertained." "

¹ 1961 PA 236, § 922; MCLA 600.934; MSA 27A.934.

General ex rel O'Hara v Montgomery, 275 Mich 504, 514 (1936) quoting with approval from *Commonwealth v Lockwood*, 109 Mass 323.

Unless their inquiry is limited by legislation the questions asked by the Board of Law Examiners must be considered to extend to every prosecution which reached the stage of conviction as above described. Subsequent judicial treatment of the case cannot erase the occurrence of a conviction although the conviction may be reversed and the judgment of the trial court overturned.

Thus in response to your first question we must hold that, with the exception noted below, a person against whom a prosecution has been initiated and who has pleaded guilty or been found guilty by a judge or jury must answer affirmatively when asked whether he has ever been convicted. This is true regardless of whether or not his conviction was subsequently overturned and the case dismissed. Obviously these mitigating circumstances may also be brought to the attention of the board and would doubtless be taken strongly into account by them in reaching their decision.

You have requested my opinion as to the intent of the Board of Law Examiners by its use of the term "convicted" in Question 28d of the "Affidavit of Personal History." This term is not used in any statute or rule. My conclusion is based upon legal authorities that are used to construe statutes and rules. If the intent of the Board of Law Examiners is otherwise, the form of Question 28d should be appropriately modified by the Board of Law Examiners.

The answer to your second question concerning a minor whose conviction has been set aside in conformity with MCLA 780.621-622; MSA 28.1274 (101)-(102) is governed by the express language of the statute. Section 2 of the act provides that:

"Upon the entry of an order as provided for in section 1 of this act, the applicant, for purposes of the law, shall be deemed not to have been previously convicted." 1965 PA 213, § 2

Application for admission to the bar is certainly a legal purpose within the meaning of this statute and thus an applicant must be considered to have been expressly authorized by the legislature to state in these circumstances that he has not been previously convicted. For this purpose it should make no difference whether the conviction was arrived at by entry of a plea of guilty or by the decision of a judge or jury. Regardless of these factors an applicant whose conviction has been set aside by a motion pursuant to 1965 PA 213; MCLA 780.621 *et seq*; MSA 28.1274 (101) *et seq*, may answer in the negative when asked whether he has ever been convicted.

Your third question concerns persons assigned the status of a youthful trainee pursuant to the Holmes youthful trainee act, 1966 PA 301; MCLA 762.11 *et seq*; MSA 28.853(11) *et seq*. Section 14 of this act provides that:

"An assignment of a youth to the status of youthful trainee . . . shall not be deemed to be a conviction of crime . . ."

Again, in view of the fact that the questions asked by the Board of Law Examiners have been framed exclusively in terms of conviction it is apparent

that one who has been assigned the status of a youthful trainee may properly answer "no" when asked whether he has ever before pleaded guilty or been convicted of a crime.

FRANK J. KELLEY,
Attorney General.

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ARCHITECTS: Distinguish repair or maintenance of a public work from construction of a public work.

PROFESSIONAL ENGINEERS: Distinguish repair or maintenance of a public work from construction of a public work.

PUBLIC WORKS: Distinguish repair or maintenance of a public work from construction of a public work.

WORDS AND PHRASES: "Construction," "Repair" and "Maintenance"

The services of a registered architect or a registered professional engineer are not required for maintenance or repair of public works, except for school buildings where the cost of reconstruction or remodeling exceeds \$15,000.00.

Opinion No. 4778

July 9, 1973.

Honorable Stanley F. Rozycki
State Senator
The Capitol
Lansing, Michigan 48902

In your letter of March 6, 1973, you requested my opinion on the following question:

"Does Section 18, Act No. 240, P.A. 1937, as amended, being Section 338.568 of the Compiled Laws of 1948 have reference to 'Construction' of new buildings, to the repair or maintenance of an existing structure, or both?"

Section 18 of 1937 PA 240, as amended, provides:

"It is unlawful for this state, or for any of its political subdivisions, or any county, city, town, township, village or school district to engage in the construction of any public work involving architecture or professional engineering, unless the plans and specifications and estimates have been prepared by, and the construction executed under the direct supervision of, a registered architect or a registered professional engineer, and unless any survey of land on which any such public work has been or is to be constructed shall be made under the supervision of a registered land surveyor. However, nothing in this section shall be held to apply to any public work wherein the contemplated expenditure for the completed project does not exceed \$5,000.00." MCLA 338.568; MSA 18.84(18) (Emphasis added.)

As the statutory language indicates, when certain governmental entities engage in the construction of public works, which require an expenditure