

of the equal protection clause of the Fourteenth Amendment to the United States Constitution.

FRANK J. KELLEY,
Attorney General.

741002.2 —————

NURSES: Maiden name.

A married woman may retain her maiden name.

The Board of Nursing may require a licensee to notify it of any change of name or address.

Opinion No. 4834

October 2, 1974.

State Board of Nursing
1033 South Washington Avenue
Lansing, Michigan 48926

You have requested my opinion on whether the State Board of Nursing may issue a license to a married woman in her maiden name.

As you have explained, there have been instances where married nurses have wanted to use their maiden name on their licenses without resorting to judicial proceedings.

There are two kinds of situations involved; one occurs when a married woman desires to retain her maiden name, and the other when she wants to return to her maiden name after having assumed her husband's name. Restating the first situation in question form: Does marriage automatically change the name of a woman from her maiden name to that of her husband?

A search of authority in Michigan reveals that marriage does not automatically change a woman's name. In OAG, 1935-1936, No 93, p 254, 255 (July 30, 1935), it is stated:

"There can be no doubt that a woman, upon marriage, has the right to take the surname of her husband, and such is customary, but there is no law which forbids a woman from continuing to use her maiden name in all business dealings, . . ."

A discussion of whether, after marriage, it is proper for a woman to continue to use her name in public office appears in OAG, 1929-1930, p 824 (March 27, 1930), which concludes that there is nothing requiring a married woman to use her husband's name in public office. See also OAG, 1939-1940, p 53 (March 13, 1939) and OAG, 1923-1924, p 138 (March 29, 1923). Thus, it is clear that upon marriage a woman may continue to use her maiden name or she may adopt the name of her husband.

The second situation presents the question of whether having assumed her husband's name, may a married woman return to the use of her maiden name?

In OAG, 1935-1936, p 255, *supra*, it is further stated:

“Assuming, however, that by marriage a woman’s name is changed, there is nothing in our law which forbids her from changing her name to her maiden name, or any other name, provided it is not done with a fraudulent intent.

“At common law---

“Where it is not done for a fraudulent purpose, and in the absence of statutory restriction, one may lawfully change his name without resort to any legal proceedings, and for all purposes the name thus assumed will constitute his legal name just as much as if he had borne it from birth.’

“* * *

“Section 15956 of the Compiled Laws of Michigan of 1929 authorizes the change of name by an adult person. This section provides:

“The probate court of any county of this state shall have power, by an order to be entered on its journal, to change the name of any adult person who has been one (1) year a resident of such county who may make a petition in writing to such court for that purpose, showing a sufficient reason for such proposed change, and that such change is not sought with any fraudulent or evil intent; and, provided, that notice of intention to make such application shall be published six (6) weeks prior to the making of such application, and for three (3) successive weeks in a newspaper printed and published in said county where the application is to be made, if there be one (1), or in a newspaper printed and published in an adjoining county, or in the nearest county in which a newspaper is or may be printed and published.’

“There is nothing in this act which makes this statutory method exclusive, and as has been stated in 45 Corpus Juris, at page 362:

“‘. . . In the absence of express provision making the statutory method exclusive, it is held that such statutes do not abrogate the common-law right of an individual to change his name without application to the courts.’” (pp 255-256)

Rule 27, being 1968 AACS 338.1227, promulgated by the State Board of Nursing, reads in pertinent part:

“ . . . A person holding a certificate shall notify the board of any change of name or address. A copy of the legal document authorizing the change of name shall be received in the board office before the name will be changed on the records.”

In *Forbush v Wallace*, 341 Supp 217 (1971), *aff’d* 405 US 970; 92 S Ct 1197; 31 L Ed 2d 246 (1972), the court upheld reasonable regulations in light of the state’s significant interest in maintaining a close watch over its licensees.

Certainly, the state’s interest in regulating nurses who are entrusted with the public health will allow for reasonable regulation. Rule 27 requires that a “legal document authorizing the change of name” must be forwarded to the Board before the name is changed on the license. In my opinion, an

affidavit from the licensee in conjunction with the common-law right to change one's name is sufficient legal documentation for the purpose of this rule.

FRANK J. KELLEY,
Attorney General.

741024.1 _____

APPROPRIATIONS: To nonexistent entity.

STATE HOUSING DEVELOPMENT AUTHORITY: State funds.

WORDS AND PHRASES: State funds.

An appropriation to a nonexistent entity is invalid and may not be expended.

State funds appropriated to the State Housing Development Authority lose their identity as state funds after being transferred and may not be returned to the general fund by legislative enactment.

Opinion No. 4841

October 24, 1974.

Dr. John D. Dempsey, Director
Department of Management and Budget
Lewis Bass Building
Lansing, Michigan 48913

You have requested my opinion on two questions concerning appropriation bills and implementation thereof.

Your first question asks whether 1974 PA 243, §21 is valid. 1974 PA 243, §21 reads:

"The sum of \$45,300.00 appropriated in this act for the office of legislative corrections officer is for the same office as that created in Senate Bill No. 126 of the 1973-74 regular session of the legislature as the office of corrections ombudsman. The office of corrections ombudsman so created shall be known as, and designated as, the office of legislative corrections and the head of the office shall be designated as the legislative corrections officer with all the powers and duties designated in Senate Bill No. 126."

Senate Bill 126 was an appropriation bill enacted into law as 1973 PA 107. OAG No. 4824 (July 24, 1974) responded to the question of whether the provision in 1973 PA 107 creating the office of legislative corrections ombudsman, was constitutional. Inasmuch as 1973 PA 107 was an appropriations act and did not contain a reference in its title to the creation of such an office as required by Const 1963, art 4, §24, I concluded that the provision which sought to create the office of legislative ombudsman was unconstitutional. In response to your current inquiry regarding the same office, it is necessary to conclude that the appropriations contained in 1974 PA 243, §21, totaling \$45,300 for the office of legislative corrections officer, is for an illegally constituted office and, therefore, may not be expended.