

"We hold that a municipality has the discretionary authority to indemnify a police officer for the expenses he has sustained in the successful defense to criminal or civil charges which arose out of and in the scope and course of his employment for the municipality. . . ."

Applying the *Messmore* rule, it is my opinion that a public officer may be indemnified for legal expenses in defense of a legal action alleging wrongful conduct by him where he acted in good faith in discharging his official duties, assuming there are appropriate available funds for this purpose.

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**FUTURE ESTATES OR INTERESTS:**

Duration of possibilities of reverter and rights of re-entry

**DEEDS AND CONVEYANCES:**

Duration of possibilities of reverter and rights of re-entry

**RAILROADS: Rights of way**

Pursuant to 1968 PA 13, title to a railroad "right of way" held in fee subject to a right of re-entry for condition broken or a possibility of reverter, may ripen into title in fee simple absolute if the specified contingency does not occur within thirty (30) years after creation of the terminable interest unless the right of termination has been preserved by recording of requisite notice under the statute.

Opinion No. 4949

March 24, 1976.

The Honorable John F. Toepp  
State Senator  
The Capitol Building  
Lansing, Michigan 48901

You have requested my opinion concerning the application of 1968 PA 13; MCLA 554.61 *et seq*; MSA 26.49(11) *et seq*, to land in which a railroad corporation has, for railroad purposes, acquired from a private party the following terminable interest:

- (a) a fee subject to right of re-entry for condition broken; or,
- (b) a fee subject to possibility of reverter.

1968 PA 13, *supra*, provides that an interest in real property subject to termination by a provision in a conveyance or other instrument of title, is freed from any right of termination if the specified contingency does not occur within thirty (30) years after creation of the terminable interest.

1968 PA 13, *supra*, § 4, however, provides:

"This act does not apply:

- (a) To a lease for a term of years.
- (b) If the specified contingency must occur, if at all, within the period of the rule against perpetuities.

(c) If the terminable interest is held for public, educational, religious or charitable purposes.

(d) If the terminable interest is created in a conveyance from the United States of America, the state or any agency or political subdivision of either of them."

It is my opinion that terminable interests acquired by a railroad corporation are not excluded from operation of the act by 1968 PA 13, § 4, *supra*. In other words, title to a railroad "right of way"<sup>1</sup> held in fee subject to a right of re-entry for condition broken or a possibility of reverter may ripen into title in fee absolute, no longer subject to termination, if the contingency specified does not occur within thirty (30) years after the creation of the terminable interest.

The purpose of 1968 PA 13, *supra*, is to extinguish conditions and reversionary interests that impair the marketability of title long after the grantor's benefit from performance of the condition has expired.

In the case of a railroad "right of way" conveyed prior to September 18, 1931,<sup>2</sup> the occurrence of the specified contingency (e.g. abandonment) would result in either:

(a) a right of re-entry accruing to the *grantor or his then living heirs; or*

(b) an automatic reverter of title to the *grantor or his then living heirs.*

The right of re-entry or reverter of title in such cases *would not accrue to the benefit of the owner of a parcel adjacent to the abandoned railroad right of way unless by happenstance, the grantor or his heirs own such parcel on the date of abandonment.*

Recognizing that most railroad lines in this State were constructed decades ago, title to rights of way upon abandonment of a railroad (in the absence of 1968 PA 13, *supra*) would vest, or rights of entry accrue to individuals whose present whereabouts are unknown or the heirs of individuals long since deceased whose identity and whereabouts cannot be ascertained. The resulting impairment of marketability or alienability of title is precisely what 1968 PA 13, *supra*, seeks to avoid.

I therefore conclude that it was not the intention of the legislature to except railroad rights of way from the curative provisions of 1968 PA 13, *supra*.

It should be noted, however, that pursuant to 1968 PA 13, *supra*, § 5:

"A right of termination may be preserved by the recording, within a period of not less than 25 nor more than 30 years after creation of

<sup>1</sup> "Right of way" as used in this opinion refers only to land in which a railroad corporation has acquired a determinable or conditional fee interest, i.e., not to easements.

<sup>2</sup> "Attempted inter vivos alienation of either a right of entry or a possibility of reverter, created prior to September 18, 1931, extinguishes such interest, but such interests are descendible, may be released to the holder of the possessory estate and, if held in conjunction with a reversion, may be transferred with the reversion." *Michigan Land Title Standards* (3rd Ed) (1975) Standard 9.11.

the terminable interest or within 1 year after the effective date of this act, whichever is later, of a written notice that the owner of such right of termination desires to preserve the same, such notice to be recorded in the register of deeds office of the county where the real property subject to such right of termination is located. Such notice shall be verified by oath, shall describe the land involved and the nature of such right of termination, including the specified contingency, and shall state the name and address of the owner of such right of termination. The recording of such notice shall operate to preserve such right of termination from the operation of this act for a period of 30 years from the date of recording of such notice."

FRANK J. KELLEY,  
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**INCOMPATIBILITY OF OFFICE: Sheriff/county political party executive committee treasurer**

A county political party executive committee treasurer does not hold a public office; it is therefore not incompatible for a person to simultaneously serve as sheriff and county political party executive committee treasurer.

Opinion No. 4969

March 24, 1976.

Hon. Richard J. Allen  
State Senator  
Capitol Building  
Lansing, Michigan

Hon. Ernest W. Nash  
State Representative  
Capitol Building  
Lansing, Michigan

You have both requested my opinion as to whether it is incompatible for a county sheriff to simultaneously serve as a county political party executive committee treasurer.

Const 1963, art 7, § 6 provides:

"The sheriff may be required by law to renew his security periodically and in default of giving such security, his office shall be vacant. The county shall never be responsible for his acts, except that the board of supervisors may protect him against claims by prisoners for unintentional injuries received while in his custody. He shall not hold any other *office* except in civil defense." [Emphasis added]

In the case of *People v Freedland*, 308 Mich 449; 14 NW2d 62 (1944), the Michigan Supreme Court considered the meaning of the terms "office" and "public office," stating:

"A public office is the right, authority and duty, created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public. The individual so invested is a public officer."