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STATUTES: Tie-bar provisions

STATUTES: Effect of determination of unconstitutionality

WORDS AND PHRASES: "Enacted into law"

ELECTIONS: Corrupt practices legislation

Corrupt practices legislation contained in the Michigan election law of 1954 PA 116, §§ 901 through 929, were not repealed and are currently in effect.

The advisory opinion of the Michigan Supreme Court and a declaratory judgment to the same effect issued by a circuit judge for Ingham County render the political reform act, 1975 PA 227, unconstitutional so that the provisions in the political reform act repealing other statutes are invalid. Where a statute contains a tie-bar provision to the effect that one of its provisions shall not take effect if another bill is enacted into law before a certain date and that bill is in fact enacted into law before that date, the provision does not take effect.

Opinion No. 5019 April 14, 1976.

Honorable Bobby D. Crim
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Honorable William B. Fitzgerald
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Honorable John M. Engler
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Your recent letters request my opinion concerning the status of Michigan's so-called "Corrupt Practices" legislation in view of the advisory opinion of the Michigan Supreme Court issued Monday, March 29, 1976, *Advisory Opinion re Constitutionality of 1975 PA 227*, . . . Mich . . .; . . . . NW2d . . ., expressing the views of five justices that 1975 PA 227, MCLA 169.1 *et seq;* MSA 4.1701(1) *et seq*, was totally void because it had been enacted contrary to the requirements of Mich Const 1963, art 4, § 24, and in light of a declaratory judgment to the same effect issued by the Honorable Donald L. Reisig, Circuit Judge for Ingham County, on March 30, 1976, in *White* v *Attorney General,* Ingham Circuit Court No. 75-18345-AW.

Section 191 of 1975 PA 227, *supra,* provides, among other things, that Sections 901 through 929 of 1954 PA 116, MCLA 168.901-168.929; MSA 6.1901-6.1929, the "Corrupt Practices Act", would be repealed. Because Act 227 was totally invalid, we are of the opinion that § 191 would not operate to repeal §§ 901 through 929 of 1954 PA 116, the Michigan Election Law. The situation here is substantially identical to that presented to the Michigan Supreme Court in *People* v *DeBlaay,* 137 Mich 402, 404; 100 NW 598 (1904), where the Court said:

" . . . The repeal was incidental to the affirmative enactment. When the enactment of the first section proved futile, the second [repealer] section fell with it . . ." [bracketed material added]

To similar effect is *Fillmore* v *VanHorn*, 129 Mich 52; 88 NW 69 (1901).

In view of certain interim reform acts enacted by the legislature in 1974 and early 1975, certain questions arise concerning precisely which "corrupt practices" sections of the Election Law are operative and enforceable. The precise issues may be stated as follows:

(1) Are the 21 new "corrupt practices" sections which would have been added to the Michigan Election Law by 1974 PA 272 currently effective?

(2) Were the previously-existing "corrupt practices" sections of the Election Law listed for repeal by 1974 PA 272 [Sections 901, 902, 903, 904, 905, 906, 907, 908, 909, 911, 916, 918, 919 and 920] repealed?

For reasons discussed below, I am of the opinion that both questions should be answered in the negative.

These questions must be analyzed against an intricate series of legislative events and enactments. The relevant materials are 1974 PA 272 (Enrolled Senate Bill 1016 of 1974), 1975 PA 18 (Enrolled House Bill 4615 of 1975) and 1975 PA 121 (Enrolled House Bill 5363 of 1975).

On October 2, 1974 the Governor signed Enrolled Senate Bill 1016 into law as 1974 PA 272, hereinafter referred to as "Act 272." That bill was apparently passed by the legislature with the expectation that it would be given immediate effect because subsection (2) of enacting section 2 required that certain rules be promulgated, pursuant to authority conferred in a section added to the Election Law by Act 272, not later than January 1, 1975. However, Act 272 was not given immediate effect and thus took effect on April 1, 1975, being the 91st day following *sine die* adjournment of the legislative session in which it was enacted, Const 1963, art 4, § 27, OAG, 1945-1946, No 0-3395, p 305 (April 10, 1945).

Act 272 had four enacting sections, of which the first three are presently significant.

The first enacting section added 21 new sections to the Michigan election law. Those sections would all be situated in the so-called "campaign expenses" or "corrupt practices" chapter and were numbered 901a, 902a, 902b, 903a, 904a, 905a, 906a, 907a, 908a, 908b, 910a, 911a, 919a, 921, 922, 923, 924, 925, 926, 928 and 929.

The second and third enacting sections of Act 272 provided for the repeal of 14 existing sections of the same chapter which in many cases overlapped and conflicted with the sections to be added.

The second enacting section provided for delayed repeal of §§ 903, 907, 908, 909, 911 and 919. Those were to be repealed when rules required to be promulgated pursuant to § 911a were "adopted and approved."

The third enacting section provided that §§ 901, 902, 904, 905, 906, 916, 918 and 920 would be repealed when Act 272 took effect.

The second event of significance occurred on March 31, 1975, the day before Act 272 was to take effect; on that date the Governor signed Enrolled House Bill No. 4615 into law as 1975 PA 18. That bill had been given immediate effect by the legislature.

The first enacting section of 1975 PA 18 amended §§ 901a, 902a, 902b, 904a, 907a, 908b, 911a, 919a, 921 and 929 of the Michigan election law, as added by Act 272.

The second enacting section of 1975 PA 18 amended the second and third enacting sections of Act 272 dealing with repeals. The second enacting section of Act 272 was amended to provide that §§ 903, 907, 908, 909, 911 and 919 of the Michigan election law would be repealed when the rules required to be promulgated pursuant to § 911a were "promulgated" (as opposed to "adopted and approved" as specified in the original version of the enacting section), which promulgation was required to take place not later than July 1, 1975.

The third enacting section of Act 272 was amended to provide that §§ 901, 902, 904, 905, 906, 916, 918 and 920 of the Michigan election law would be repealed on July 1, 1975.

The third enacting section of 1975 PA 18 contained two subsections. Subsection (1) provided that § 911a, which would be added to the Michigan election law by Act 272 and which provided the authority for promulgation of rules, would take effect on April 1, 1975. This was necessary in order that the rules could be promulgated by the July 1, 1975 deadline imposed by subsection (2) of the second enacting section of Act 272, as amended by the second enacting section of 1975 PA 18. Subsection (2) of the third enacting section of 1975 PA 18 provided that all of the other new sections to be added to the Michigan election law by Act 272, being §§ 901a, 902a, 902b, 903a, 904a, 905a, 906a, 907a, 908a, 908b, 910a, 919a, 921, 922, 923, 924, 925, 926, 928 and 929 would take effect on July 1, 1975.

The next event of significance occurred on June 30, 1975, the day before the revised effective date for the new sections (other than § 911a) to be added by Act 272 and the revised effective date of the repeal of the sections to be repealed by Act 272. On June 30, 1975 the Governor signed Enrolled House Bill No. 5363 into law with immediate effect as 1975 PA 121. That Act added a new § 928a to the Michigan election law. That new section contained three subsections.

Subsection (2) of new § 928a repealed the second enacting section, as amended, and the third enacting section, as amended, of Act 272, and repealed the second and third enacting sections of 1975 PA 18. Had the legislature done nothing more, all of the added sections would have taken effect on June 30, 1975 and none of the sections which were to be repealed would have been repealed.

However, subsection (1) of new § 928a provided that §§ 901, 902, 903, 904, 905, 906, 907, 908, 909, 911, 916, 918, 919 and 920 of the Michigan election law would be repealed.

In order to correlate the repealing of the old sections with the effective date of the added sections, subsection (3) of new § 928a provided that

subsection (1) of that section, which as noted in the preceding paragraph required that certain enumerated sections be repealed, would not take effect until September 1, 1975 and would not take effect if either Senate Bill No. 880 or House Bill No. 5250 of the regular session of 1975 "is enacted into law before September 1, 1975". Subsection (3) of new § 928a likewise provided that the proposed new sections (other than § 911a) which would be added to the Michigan election law by Act 272 (i.e., §§ 901a, 902a, 902b, 903a, 904a, 905a, 906a, 907a, 908a, 908b, 910a, 919a, 921, 922, 923, 924, 925, 926, 928 and 929) would not take effect until September 1, 1975 and would not take effect if either Senate Bill No. 880 or House Bill No. 5250 of the regular session of 1975 "is enacted into law before September 1, 1975".

House Bill 5250 was signed into law by the Governor on August 27, 1975 as 1975 PA 227, MCLA 169.1 *et seq;* MSA 4.1701(1) *et seq*. The law is clear that the process of "enactment" was complete as of that time, *Stadle* v *Twp of Battle Creek,* 346 Mich 64, 68-69; 77 NW2d 329 (1956). Although the act was not given immediate effect and would therefore not take effect until a date later than September 1, 1975, it was nevertheless "enacted" as of that date.

It is clear that 1975 PA 227 (Enrolled House Bill No. 5250) is totally invalid. Although the law is well established in Michigan that an unconstitutional statute is void *ab initio,* and not merely from the date of the judicial declaration of unconstitutionality, *Briggs* v *Campbell, Wyant & Cannon Foundry Co,* 379 Mich 160, 165; 150 NW2d 752 (1967), we are nevertheless of the view that House Bill 5250 was "enacted into law" within the meaning of Michigan Election Law § 928a(3) on August 27, 1975. I interpret "enacted into law" as merely requiring that the legislative and executive procedures which are a part of the enactment process take place, and do not interpret such language as imposing the additional requirement that the statute has been "validly" enacted. The following considerations underly this interpretation:

(1) The term "enacted into law" may clearly have a purely procedural connotation. The only basis for the rather unusual process of issuing advisory opinions outside the context of pending cases or controversies is Mich Const 1963, art 3, § 8, which operates only after a statute "has been enacted into law." Although the Michigan Supreme Court found 1975 PA 227 to be totally invalid, the Court necessarily found that the statute had been "enacted into law" for jurisdictional purposes.

(2) Whether or not House Bill 5250 was "enacted into law" by September 1, 1975, has a profound effect on the manner in which persons would exercise valuable constitutional rights. If it was so "enacted into law" certain old sections were repealed and were replaced with new, more demanding sections. On the other hand, if it was not "enacted into law" the new sections would not take effect and the old sections would not be repealed. Both sets of sections set forth courses of action which one must take and provide criminal penalties if the courses of action were not taken. I believe that the legislature only intended that a person, in determining whether his

conduct was criminal or permissible, would only have to seek out whether the objective facts of the enactment process had occurred. The legislature did not intend that persons would be put to the additional process of determining whether the *enactment* was valid.

(3) In other instances where so-called "tie-bar" language has been used, the legislature has been very explicit in expressing its intention that the other bill must not merely be "enacted" but must also take effect (i.e., must be "valid"); see 1951 PA 51, § 23, MCLA 247.673; MSA 9.1097(23), which provided that the act of which it was a part would become law only if another bill was "enacted into law and becomes effective". I would assume that the legislature would consistently follow its own precedent and would have made an explicit reference to the other bill's "taking effect" where that event (or where the declaration of the other bill's validity) was intended to be a condition precedent to the earlier law's becoming either operative or inoperative.

I am therefore of the opinion that House Bill No. 5250 was enacted into law before September 1, 1975 as provided in Michigan Election Law § 928a(3), as added by 1975 PA 121, and therefore:

(1) Sections 901, 902, 903, 904, 905, 906, 907, 908, 909, 911, 916, 918, 919 and 920 of the Michigan election law were never repealed;

(2) Sections 901a 902a, 902b, 903a, 904a, 905a, 906a, 907a, 908a, 908b, 910a, 919a, 921, 922, 923, 924, 925, 926, 928 and 929, purportedly added to the Michigan election law by Act 272, did not take effect on September 1, 1975, and will never have any effect.

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FRANK J. KELLEY,
Attorney General.

COLLECTION PRACTICES ACT: Purchase of claim.

A bona fide purchaser of a claim is not a "collection agency" within the meaning of the Collection Practices Act. Nevertheless, a purchaser of a claim may not engage in a collection practice prohibited by 1974 PA 361, §§ 18 and 19.

Opinion No. 4954 April 15, 1976.

Ms. Donna Duckworth
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You have asked the following question:

"I hereby request your opinion on the applicability of the Collection Practices Act to a business which buys 'claims' owed to a retail